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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44

Addendum

Report of the mission to the United States of America on the issue of violence against women in state and federal prisons

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Introduction

1. At the invitation of the Government of the United States of America, transmitted by letter dated 15 May 1998, the Special Rapporteur on violence against women, its causes and consequences visited Washington D.C. and the States of New York, Connecticut, New Jersey, Georgia, California, Michigan and Minnesota from 31 May to 18 June 1998 to study the issue of violence against women in the state and federal prisons in each of the states mentioned.

2. The Special Rapporteur would like to express her sincere appreciation for the cooperation and assistance extended to her by the Government of the United States of America. During her visit to Washington D.C., she met with high-level representatives from the Department of State, the Department of Justice, the Immigration and Naturalization Service (INS) and the Bureau of Prisons, all of whom provided her with extensive briefings and documents. The Special Rapporteur is grateful for the support received from the Government in facilitating access to federal prisons and INS detention facilities located in the states chosen by her. At the end of her mission, the Special Rapporteur met with officials of the Federal Government to brief them on the details of her visit. The Special Rapporteur also met members of the United States Senate concerned with the issues affecting women in prisons and would like to take the opportunity to thank them for their valuable support.

3. During her visit, the Special Rapporteur also met with state authorities. In New York, she met the Director of Women's Programs of the New York State Governor's Office, and the Adviser to the Permanent Mission of the United States to the United Nations; in Atlanta, the Special Rapporteur met with the Director of Women's and Juvenile Services of the Georgia Department of Corrections. In Minnesota, the Special Rapporteur had a very useful meeting with the State Commissioner for the Department of Corrections and his Deputy, the Assistant Commissioner of the Community Services Division, the Assistant Commissioner Institution Division, the Human Resource Manager, the Warden of the Minnesota Correctional Facility (Shakopee), the Director of Planning for Female Offenders as well as the Planner for Juvenile Female Offenders. The Special Rapporteur wishes to thank state authorities for their availability and cooperation with her visit. A list of principal persons consulted is annexed to the present report.

4. The Special Rapporteur is also grateful to the Regional Office of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Washington D.C., for the valuable information it provided in connection with the mission. The information provided was very useful in assisting the Special Rapporteur in carrying out her mission.

5. In addition, the Special Rapporteur had the opportunity to meet with several individuals and organizations independent from the Government, including formerly incarcerated women, lawyers representing prison inmates, university professors and other experts on the issue of violence against women. She also met with representatives of non-governmental organizations, (see annex).

6. The Special Rapporteur wishes to thank the International Human Rights Law Group in Washington D.C. for the preliminary information provided to

her in preparation for her mission, as well as for the organization of a round table on "Women in Prisons" held at the Washington College of Law on 1 June 1998. Further, she would like to express her gratitude to Human Rights Watch in New York for their assistance and information in preparation for her visit.

7. During her visit to selected federal and state prisons and INS detention facilities, the Special Rapporteur met with authorities at: Bayview Correctional Facility and Varick Street INS Facility (New York City); Bedford Hills Correctional Facility (New York State); Danbury Federal Correctional Institute (Connecticut); Elizabeth INS Facility (New Jersey); Pulaski State Prison and Washington State Prison and Metro State Prison in Atlanta (southern Georgia); Valley State Prison for Women, the Central California Women's Facility and Dublin Federal Correctional Institution (California); and Shakopee Women's Correctional Facility (Minnesota). The Special Rapporteur wishes to express her appreciation for her reception by the prison authorities.

8. During her visit to prison and detention centres, the Special Rapporteur took testimonies of 44 women in prisons (including victims of violence) and also of 10 corrections officers. The Special Rapporteur would like to express her thanks to all the women who agreed to relate their personal experiences, which enabled her to have a deeper understanding of the problems arising in prisons for women in the United States.

9. Despite prior agreements with representatives of correction institutions in Virginia and Michigan, it was not possible for the Special Rapporteur to visit prisons in those two s. Before going to Virginia, the Special Rapporteur was informed that the warden of Goochland State Prison in Richmond was unable to receive her, as he was travelling abroad. Moreover, on the eve of her visit to Michigan, the Special Rapporteur received a letter dated 12 June 1998 from the Governor of Michigan informing her that she would not be allowed to meet state representatives or to visit any of the women's prisons, despite having made extensive preparations for her visit with representatives of the Michigan Department of Corrections. The Special Rapporteur found this refusal particularly disturbing since she had received very serious allegations of sexual misconduct occurring at Florence Crane Women's Facility and Camp Branch Facility for Women in Coldwater, Michigan, as well as at Scott Correctional Facility for Women in Plymouth, Michigan.

10. The present report is intended as a case-study to complement the Special Rapporteur's previous report on violence against women perpetrated and/or condoned by the State, presented to the Commission on Human Rights at its fifty-fourth session (E/CN.4/1998/54). The Special Rapporteur chose the United States of America because of serious allegations of sexual misconduct by male corrections officers in United States prisons which had been received, and also because of the several existing programmes and activities, both at federal and state levels, to prevent and combat violence in women's prisons. It is from the practical experience of such initiatives that the Special Rapporteur hoped to gain a deeper understanding of the causes and consequences of violence against women in prisons and detention facilities and of the effective measures to eliminate such violence. The Special Rapporteur also studied issues concerning access to health care and parenting/family

programmes for incarcerated women and sought to evaluate positive initiatives undertaken by prison authorities to address the issues of violence against women in prisons.

I. INDIVIDUAL CASES

11. Twenty-six-year-old K. came from a predominantly upper-middle-class white family in Virginia. She went to college and fell in love with a young man in the community against the wishes of her parents. She was impressed by his clothes, cars and commanding presence and the attention he paid to her. He was extremely abusive, at times beating her with his hands, a belt and a brush. According to court psychologists she was suffering from classic battered women syndrome. She was young and naive and was resigned to the fact that her new boyfriend was involved in the cocaine trade. At times she carried weapons and money for him, but never cocaine. When her boyfriend realized that he was being investigated, he took K. and went to Atlanta and then to Seattle. From Seattle he sent her home, asking her to leave him. He was later found shot dead in his Seattle apartment. When she went home, she was indicted, and though she was a non-violent and a first-time offender, because of the mandatory sentencing guidelines in Virginia she was sentenced to 24 years in prison. She was pregnant at the time and held in a county jail. When she went into labour she was shackled while being transported to the public hospital and shackled after the baby was born. She spent two days with the baby, after which he was taken away from her. He now lives with her parents. Her life revolves around his visits to the penitentiary.

12. The video cameras of the Michigan Department of Corrections captured this scene: T., a young prisoner in her twenties, attempted to commit suicide. For this act she was put in administrative segregation (i.e. solitary confinement) for 20 days. During that time, she was put in four-point restraints: her hands and feet were shackled to the bed. She was naked for much of the time and was allowed to shower only once a week. Male corrections officers walked up and down and frequently peered into her room. At one point, she pleaded that the light be turned off so that she could sleep. She continued her pleading until the corrections officers warned her that she would be tear-gassed if she continued to protest. She continued nevertheless and a corrections officer held a tear-gas canister to her face and sprayed her. The guards fled because the tear gas was affecting them. She was stunned for a short while and then called for a towel to wipe her face. A compassionate female corrections officer brought her a towel.

13. V. is a 32-year-old from Long Beach, California. She was placed in the Dublin penitentiary for dealing in drugs by telephone. She was given an 8½-year sentence. Two months after she entered the facility, she was put in administrative segregation for pushing a unit manager. As a result, she was targeted. Soon after she was put in administrative segregation, she and five other women were taken by the captain and put in cells in the wing for male prisoners. The women's cell doors were kept open and male prisoners came in and raped the women. One woman was badly sodomized. V. alleges that the corrections officers were paid $50 by the offending male prisoners. After she was raped the first time, V. stayed up for 21 consecutive nights, sitting against her door so that it would not open easily. She was later moved to the Danbury prison in Connecticut, far away from her family. She joined the other

women and brought a lawsuit against the Dublin prison authorities, which resulted in an out-of-court settlement. V. is deeply traumatized. She finds it very difficult to sleep at night, and the sound of the keys that male corrections officers carry makes her shake with fear. She does not eat in the canteen because she finds that the pat searches conducted by male corrections officers extremely disturbing. Fortunately, there is a mental health officer at Danbury who is working with V. to help her overcome her trauma.

II. THE POLICY FRAMEWORK

14. Wherever the Special Rapporteur went, officials asked her why she decided to visit the United States. She explained that based on information received from diverse sources, she was convinced that there were serious issues of custodial sexual misconduct in United States prisons that had to be investigated. Many felt nevertheless that special rapporteurs should concentrate on crisis situations around the world rather than focus on countries where human rights protection is more or less ensured. The Special Rapporteur maintains that the notion that human rights protections are only for societies that are in crisis should be contested. Human rights protections are not only applicable during emergencies, but are also required in societies perceived to be crisis-free. Although the United States has a comparatively high level of political freedom, some aspects of its criminal justice system pose fundamental human rights questions. Other special rapporteurs have also stressed this point.

15. A recent report based on Department of Justice statistics points out that the United States has the largest number of prisoners of any country in the world and that women constituted 6.3 per cent of the prison population in 1995. 1/ According to a briefing paper produced by the Federal Bureau of Prisons, the percentage of women in federal prisons in 1998 was 7 per cent. 2/ The small number masks the rapid rise in the number of women incarcerated since the 1980s. According to the same report, the number of women entering the United States state and federal prison system between 1980 and 1994 increased by 386 per cent. In 1980 the number of women in prison nationwide stood at 12,331. By 1990 that number had grown to 43,000. By 1994 the population of women was 64,403. 3/ Though men predominate in large numbers, women are the fastest growing category of prisoners nationwide. 4/ In the 1980s taxpayers financed the construction of 34 prisons for women compared with only 7 in the 1960s. 5/

16. Drug-related offences accounted for a 55 per cent increase in the female prison population. African American women, who account for 14.5 per cent of the general population, make up 52 per cent of the overall female prison population 6/ and in federal prisons, 39 per cent. 7/ Sixty-eight per cent of the women in federal prisons are there because of drug-related offences. 8/ Eighty per cent of incarcerated women have at least one child and the majority are not visited by their children. 9/ The percentage of women prisoners in state prisons for violent offences in 1991 was 32.2 per cent; the vast majority were incarcerated for non-violent offences. 10/ In addition, a majority of women imprisoned for the killing of someone close to them had committed the killing while they were being abused. 11/ Eighty-five per cent of women in United States prisons have been physically or sexually abused at some time in their lives. 12/

17. The statistics confirm the Special Rapporteur's own observations with regard to the framework of violence against women in United States prisons. The United States is criminalizing a large segment of its population; this segment is overwhelmingly composed of poor persons of colour and is increasingly female. This criminalization leads to overcrowding in prisons. The Special Rapporteur believes that this situation not only arises from, but also may result in unequal protection. People with a criminal record may in some states be denied welfare, housing, custodial rights to their children and access to social services. The Special Rapporteur also believes that many of the drug-related offences for which women are incarcerated in the United States may be more appropriately handled by a community-based system of welfare and social support, as is presently the case in certain European countries.

18. As indicated, the primary reason why such a large number of women are in prison is drugs. The Special Rapporteur came across many cases in her interviews with prisoners that illustrated the callousness with which drug laws were applied. A "mule" in drug parlance is a courier who carries drugs. A recent study of drug mules in New York points out that the overwhelming majority (96 per cent) of women interviewed for drug smuggling, charged with A-1 drug felonies and sentenced to life imprisonment under New York's Rockefeller Drug Laws, had no prior criminal record. 13/ Many were unaware that they were carrying drugs; often the parcel they were carrying was called "a gift for a friend". Others had been coerced by abusive boyfriends; their lives and the lives of their children had been threatened. The case of K. outlined above is representative of such cases.

19. Another woman, L., was being abused by her husband in California. She went to Florida to stay with a friend to contemplate divorce and how to get custody of her child. While in Florida she answered the phone and delivered a message to her friend's husband, who was a drug dealer. As a result of this phone call she is now in a federal prison for 15 years and has lost custody of her daughter. She will be repatriated to her native Nicaragua after she serves her term. The husband of her friend got off lightly because he was able to trade material assistance and information for a lesser sentence.

20. It is the Special Rapporteur's belief that there should be a policy review of the impact of drug laws on women, especially "mules". A recent report concludes that there have been discussions in state legislatures on reviewing legislation with regard to mules. Such discussions should be encouraged and a thorough national review of the process may highlight the inequalities in the legislation with regard to women. This may be an important area of study for the President's Inter-Agency Council on Women set up to review policies on women.

21. With regard to women who are substance abusers, community-based substance abuse programmes appear to be underutilized. Many of the women in prison alleged that there was a double standard in sentencing for drug offences: wealthy women were more likely to be sent for rehabilitation, whereas poor women were sent to prison. Perceptions of inequality in sentencing might be removed if community-based mechanisms are made available to and utilized by women facing drug-related criminal charges.

22. The Correctional Association of New York has prepared an extensive document on the treatment of women drug couriers under the Rockefeller Drug Laws. They argue that the laws should be changed to allow judges more discretion in sentencing to prevent the re-victimization of women who fall victim to drug traffickers. The court should have the power to consider mitigating circumstances and the character or the criminal histories of those convicted of drug offences. 14/

23. The other group of women being unreasonably criminalized is the mentally ill women imprisoned in many of the facilities visited by the Special Rapporteur. According to the authorities in Dublin penitentiary, a survey of the inmates in the prison, by a Ph.D student from UCLA, revealed that 65 per cent of the women were suffering from some form of mental illness. The Special Rapporteur was repeatedly told that recently implemented mental health policies resulting in the deinstitutionalization of many mentally ill patients had contributed to increases in the imprisonment of the mentally ill. Mentally ill prisoners share rooms and facilities with the general population of women. The Special Rapporteur was informed that many of these women are given excessive dosages of psychotropic drugs.

24. Although the links between mental health policies and the imprisonment of women were beyond the scope of the Special Rapporteur's visit, credible evidence suggests that there is an urgent need to review the impact of current mental health policy on the criminalization of women. Such a review, at the federal level, could be undertaken by either the Inter-Agency Council on Women or the Violence against Women Division of the Department of Justice. States should also investigate such links.

25. One of the major factors determining whether a woman is sent to jail is her race. Other special rapporteurs have also written about this bias in the United States Criminal justice system. 15/ Almost one in three young Black men in the age group 20-29 is under criminal justice supervision on any given day. In recent years, the number of African American women entering the criminal justice system has increased the most of all demographic groups, rising by 78 per cent from 1989 to 1994. 16/ The number of Black women incarcerated in state prisons for drug-related offences increased more than eightfold (828 per cent) from 1986 to 1991. 17/ African Americans and Hispanics constitute close to 90 per cent of the offenders sentenced to state prisons for drug possession. 18/ In addition, there is a clear indiction that the proportion of Hispanic inmates has doubled since 1980. 19/

26. The statistics confirm the impression received by the Special Rapporteur that some aspects of the administration of justice impact disproportionately on minorities and raise serious questions of discrimination on the grounds of race within the criminal justice system. Discrimination is graphically illustrated by the disparities between sentences for use of crack cocaine and chemical cocaine: possession of 1 gram of crack in certain states results in a mandatory minimum sentence of 15 years, whereas possession of 500 grams of chemical cocaine carries the same punishment. Since chemical cocaine is more expensive and tends to be a middle class drug that is dealt, bought and used in the privacy of middle class homes, those who buy, sell and use chemical cocaine are less likely to be apprehended. When they are arrested, sentencing guidelines institutionalize the disparity by treating chemical cocaine

possession less harshly than possession of crack. Not only has the "War on Drugs" targeted the more easily identifiable offenders, i.e. those who sell, purchase and use drugs in a more public manner such as on the streets or in crack houses, the severity of sentences with regard to crack leads to the disparate punishment of the poor. Due to the intersections between race and poverty in the United States, the poor are overwhelmingly persons of colour. According to one report, not one white offender has been convicted for a crack offence in the federal courts in the Los Angeles area since 1986. 20/ The disproportionate levels of arrests and prosecutions of people of colour for certain offences was highlighted repeatedly throughout the mission.

27. The disproportionate number of African Americans in prison, including African American women, raises issues of equal protection in the administration of criminal justice in the United States. In addition, inmates in some prisons complained of racial discrimination. Many of the new prisons are located in poor, rural areas where the population is predominantly white. The inmates in these prisons are mainly African American or Hispanic. This racial tension sometimes appears to result in racial discrimination. Some of the corrections officers in a rural prison in California are said to use racial slurs to refer to African American inmates. Furthermore, many of the prisoners interviewed argued that with regard to work assignments within prisons, white inmates were given clerical posts while the black inmates were given more menial tasks.

28. The disparities experienced by the African American community in the United States and their large numbers within the criminal justice system does not appear to have resulted in any comprehensive policy discussion of racial discrimination in the United States either at the state or federal level. The Special Rapporteur did not receive any indication that any federal body was concerned with the issue of why African Americans are in prisons in such large numbers and what could be done to alleviate the situation. Although there is a national dialogue on race, no federal agency has been entrusted with the task of studying the intersections between race, poverty and criminalization in greater detail and providing recommendations for possible avenues of redress.

29. The Special Rapporteur was informed, in some prisons, that at least two thirds of female inmates have been sexually or physically abused in the past. Violence against women should be an important policy concern for prison authorities and federal and state agencies. Many women are in prison for killing their abusive partners. Except for the federal prison in Danbury, which had an excellent programme called the Bridge Programme, none of the other prisons had programmes to deal with the problem of domestic violence. Given the large proportion of inmates who have been victims of violence, such programmes should be more widespread both in federal and state prisons.

30. The other policy question that it is important to analyse is the triumph of the "punishment" ideology over rehabilitation in many of the states visited by the Special Rapporteur. Except for Minnesota, where the Special Rapporteur was pleasantly surprised at the emphasis on rehabilitation in the criminal justice programmes, the Special Rapporteur found that the recent trend in prison management highlights the punishment aspect of imprisonment. "Done the Crime, Do the Time" was a slogan repeated to the Special Rapporteur numerous

times. The Special Rapporteur also found a certain militarization of the prison compound in certain states. While the prisons built in earlier eras looked like college campuses, present prison construction appears to highlight barbed wire, surveillance and constant monitoring. The recently constructed INS detention centre in Elizabeth, New Jersey, is a case in point, as are the new prisons in Georgia and California. At Metro State Prison in Georgia, inmates were compelled to stand straight and salute the warden whenever he passed. In addition, many of the corrections officers had a military background, which added to the impression that the military model was the preferred pattern of prison management.

31. The "punishment" ideology is also reflected in the new wave of mandatory sentencing for certain offences. Judges with whom the Special Rapporteur spoke were emphatic that they would never have handed down certain sentences, particularly to women with children, if not for mandatory sentencing. The "no mercy" factor with regard to some of these offences has resulted not only in the overcrowding of prisons, but also the separation of mothers from their children, many of whom have been put into foster care.

32. The emphasis on punishment is also reflected in the near universal cutback in services within prisons over the last few years. Given the fact that many of the people in United States prisons are in need of support services for, inter alia, substance abuse, mental health or domestic violence, the cutback of welfare services is problematical. In Michigan, for example, reportedly all parenting programmes that allowed mothers to have access to their children have been closed down. Likewise in New York the Special Rapporteur was informed that many programmes had been cut back and that some are able to continue only with the assistance of private funders and Christian charities.

33. The primary recourse pursued by prisoners is to bring suit before the federal courts for mistreatment. The passage of the Prison Reform Litigation Act (PRLA) is an attempt to limit prisoners' access to such recourse. Many activists have queried whether it is constitutional. Signed into law in 1996, the PRLA invalidates any settlement that does not have an explicit finding or statement of a violation of a federal statute or the Constitution. Further, the PRLA terminates any court order against unlawful prison conditions after two years. The PRLA also restricts court-ordered attorney's fees without which the attorneys would not be able to pursue cases brought to protect the rights of prisoners.

34. These approaches to "punishment" were clearly not the case in Minnesota, where the women's prison the Special Rapporteur visited did not have barbed wire or fences, and where there were imaginative programmes to occupy prisoners' time. The philosophy spelt out for us by the Minnesota Department of Corrections was that rehabilitation was the prime element of their approach to the criminal justice system. In addition, they were experimenting with alternatives to imprisonment including home monitoring with the use of satellites. They also had innovative programmes such as a restorative justice programme in which victims and offenders meet each other along with a trained mediator. Minnesota also has halfway houses for inmates who are about to be released from prison to ease their re-entry into civilian life.

III. LEGAL FRAMEWORK FOR THE TREATMENT OF PRISONERS

35. International standards with regard to the treatment of prisoners are set out in the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Prisoners in 1955 and approved by the Economic and Social Council by its resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Although the Rules are not binding on s, they set out international standards for the treatment of prisoners based on consensus and practice.

36. The basic principle of the Rules is non-discrimination. According to rule 6, all rules "shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

37. With regard to the treatment of women, the Rules are very clear. Rule 8 (a) states that "[m]en and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate". Rule 53 is even more explicit: paragraph 2 states that "[n]o male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer". Further, paragraph 3, "[w]omen prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties ...".

38. There are other provisions that are relevant for the present study. Rule 9 (1), for example, states, "[w]here sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or a room".

39. With regard to health services, it is stated in rule 22 (1) that "[a]t every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry". According to rule 23 (1), "[i]n women's institutions there shall be special accommodation for all necessary prenatal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate". Rule 23 (2) states that "[w]here nursing infants are allowed to remain in the institutions with their mothers, provision shall be made for a nursery staffed by qualified persons ...".

40. Rule 33 states that [i]nstruments of restraint, "such as handcuffs, chains, irons and straightjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints ...".

41. Rule 35 recognizes the right of prisoners to be informed about their rights and grievance procedures and to make a request or complaint without censorship to the central prison administration, the judicial authority or other proper authorities. Rule 46 sets out guidelines for the hiring of

corrections officers and calls for a "careful selection" and proper training of the personnel not only when they join, but also during their service. The Rules also suggest that prisoners be given work, but that the "organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life" (rule 72 (i)). Also, rule 77 provides for setting up education programmes for inmates integrated, so far as practicable, with the education system of the country.

42. The Rules also stipulate that "[p]ersons who are found to be insane shall not be detained in prison" and that "those who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management" (rule 82).

43. The Standard Minimum Rules for the Treatment of Prisoners is augmented by the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in its resolution 45/111 of 14 December 1996. The Principles are based on the premise that "[a]ll prisoners shall be treated with respect due to their inherent dignity and value as human beings". They also point out that all prisoners retain their fundamental rights under the Universal Declaration of Human Rights as well as all other rights as spelled out in international conventions and declarations. In addition to the Standard Minimum Rules and the Basic Principles for the Treatment of Prisoners, the General Assembly also adopted, in its resolution 43/173 of 9 December 1988, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

44. Additionally, the United States has ratified the International Covenant on Civil and Political Rights as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has, however, claimed that the provisions of the conventions are "non-self-executing". This means that, unless there is enabling legislation, no one can bring an action in the United States courts. The Human Rights Committee, in its General Comment 16 on article 17 (right to privacy), argued that "[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex" (see HRI/GEN/1/Rev.3, part I).

45. Under United States law, the constitutional provisions that are invoked to vindicate prisoners' rights are the Eighth Amendment and the Fourth Amendment. Although the Eighth Amendment prohibits "cruel and inhuman punishment", it has been interpreted quite narrowly by United States courts. To prove a violation, one must not only prove the injury, but also the intent of the person inflicting such injury. With regard to women prisoners, a 1994 Supreme Court decision held that the Eighth Amendment is violated when an officer with deliberate indifference exposes an inmate to a substantial risk of sexual assault. 21/ In a decision of the ninth circuit federal court, it was held that subjecting women with a history of sexual abuse to pat searches by men could constitute cruel and inhuman punishment. 22/

46. The question whether prisoners have a right to privacy under the United States Constitution has not been clearly decided. In Hudson v. Palmer, the Supreme Court held that prisoners do not have reasonable expectation of privacy, but in another case, the Court argued that convicted prisoners do not forfeit constitutional protections merely because they are prisoners. 23/ So while the international standards clearly state that a prisoner does not give up his/her civil liberties, including the right to privacy, upon conviction, the United States courts have not made a final determination on this matter.

47. The United States is a federal system and the states are responsible for their own criminal laws, prisons and prisoner legislation. It is seen as an affair of government devolved upon state authorities. However, the United States Department of Justice can enforce national standards based on statutory authority. Under Title 18, sections 241 and 242, of the United States Code, they can proceed under the criminal law for violating a prisoner's right and convict individual officers. They have to prove beyond reasonable doubt that a right has been violated and that there was a specific intent on the part of the official to deny the person his rights. It is extremely rare that prosecutions take place under this law.

48. The more popular civil provision is the Civil Rights of Individual Persons Act. This law, passed in 1980, allows the Federal Government to bring suit against state institutions for violating constitutional rights. The standards for intervention are quite high. The Department of Justice must have reasonable cause to believe that the state is involved in a set of practices where there are "egregious or flagrant conditions" that violate constitutional provisions. The Department of Justice receives information from diverse sources and when it deems that it has a sufficient body of information, it begins investigations. According to the briefing paper prepared by the Department, it investigated 246 jails, prisons, juvenile correctional facilities, mental health facilities and nursing homes from 1980 to September 1996. Currently they are investigating women's prisons in Arizona and Michigan. Even though the Michigan State government refused them access, the Department is going ahead. When the Department investigates, its attorneys and consultants visit the establishments, conduct interviews with the inmates, tour the facilities and, if conditions are "egregious or flagrant", it will write to the state, summarizing its findings and setting out the steps that need to be taken. If there is no action by the State within 49 days, they may institute legal action against the State for constitutional violations. In their discussions with the Special Rapporteur, members of the Department of Justice said that, owing to limited resources, the Department could not be as active as it would like to.

IV. GENERAL FINDINGS

A. Diversity and the lack of minimum standards

49. The first finding that the Special Rapporteur would like to highlight is the extraordinary diversity of conditions in United States prisons. The Special Rapporteur was astonished that the prisons that she saw on video in Michigan and the prison that she toured in Minnesota were in the same country. Diversity is an important part of federalism in the United States context; however, there is diversity even within the states. Officials at Valley State

Prison in California told the Special Rapporteur that many of the charges of sexual misconduct were frivolous, while across the street, in the Central California Women's Facility, sensitization training on sexual misconduct was being vigorously pursued. Further, 10 cases involving sexual misconduct had been prosecuted, leading to a conviction in one case. Although criminal prosecution was not successful in the other cases, the services of the accused were terminated. In Georgia, the Special Rapporteur was informed that there were 159 counties and that there was no uniformity within the state in terms of policing and correctional institutions.

50. There is a need to develop minimum standards with regard to state practices in women's prisons, especially in the area of sexual misconduct. The Special Rapporteur therefore welcomes the initiative taken by Andie Moss and the National Institute of Corrections and their plan for training state, local and federal correctional agencies in the area of sexual misconduct.

B. Use of instruments of restraint

51. In addition to the lack of minimum standards, the Special Rapporteur discovered the use of practices that contravened the Standard Minimum Rules on the Treatment of Prisoners. Rule 33 states clearly that instruments of restraint should not be used as punishment and that chains or irons should never be used as restraints. The Special Rapporteur was informed that there were large-scale violations of this provision in United States prisons. Reportedly, women refugees and asylum seekers coming into the United States are, in many cases, shackled at the airport even when there is no criminal sanction against them. In INS detention centres, prisoners are taken to their interviews in leg-irons.

52. Convicts may be restrained in certain circumstances. The case of T. in Michigan was described above (para. 12). Amnesty International reports that mentally disturbed prisoners have been bound, spreadeagled on boards for prolonged periods without proper medical authorization. 24/ According to Amnesty International, there are no nationally binding minimum standards regarding the use of restraints in the United States.

53. Women in labour are also shackled during transport to hospital and soon after the baby is born. The Special Rapporteur heard of one case where shackles were kept on even during delivery.

54. The use of these instruments violates international standards and may be said to constitute cruel and unusual practices. Some States, such as Minnesota, have abandoned the use of four-point restraints and instead use a "chair" with a straightjacket. In some cases, the chair is only used with the presence of a round-the-clock nurse. The chair can be abused and Amnesty International has chronicled these abuses in detail. 25/ The use of gas and chemical sprays, such as shown on video to the Special Rapporteur in Michigan, and electroshock devices is also widespread in the United States. The abuse of restraints is of major concern to the Special Rapporteur. Many NGOs gave her evidence of such practices and she was able to see some of them on video in Michigan. The use of restraints without medical supervision and for prolonged periods is a clear violation of international standards.

C. Sexual misconduct

55. The Special Rapporteur interviewed women who had been subjected to some form of sexual abuse in practically all the facilities except in Minnesota. Sexual misconduct covers a whole range of abusive sexual practices in the context of custody. Rape does occur, but it is a fairly rare phenomenon. The more common types of sexual misconduct are sex in return for favours or consensual sex. Given the power imbalance inherent in prison/prisoner relationships and the hierarchy within the prison, relationships between prison guards and prisoners corrupt the prison environment and tend to exploit the women. Sanctioned sexual harassment, i.e. women being pat-frisked by men and monitored in their rooms and in the showers by male corrections officers, is also prevalent. A woman who was housed in a Michigan prison said that 1985, when the prison system began allowing men to guard women in women's prisons, was the turning point; after that sexual misconduct accelerated.

56. From the literature received by the Special Rapporteur and from discussions she had in the United States, it is clear that sexual misconduct by male corrections officers against women inmates is widespread. National mobilization by prisoners' groups and the prisoners themselves seems to have led to fresh and innovative attempts to deal with the problem. Although the Standard Minimum Rules for the Treatment of Prisoners requires that women prisoners be supervised only by women officers, the Supreme Court has deemed such a standard as unconstitutional under Title VII of the Civil Rights Act of 1964, the equal employment opportunity statute. Accordingly, it was found that the employment and career opportunities of female corrections officers would be curtailed if such a standard were implemented since there are only a small number of women's prisons. As a result, the United States continues to have male corrections officers supervising women prisoners. The United Nations Human Rights Committee has also expressed concern about male prison officers guarding women in United States prisons. 26/

57. The presence of male corrections officers in housing units and elsewhere creates a situation in which sexual misconduct is more pervasive than if women were guarded by female officers. Although there have been cases of sexual misconduct on the part of female corrections officers, such cases were the exception rather than the rule. Corrections officers told the Special Rapporteur that men were necessary in women's prisons because they provided positive male role models. They argued that the key to success was in the professionalism of the officers and not their gender. They also said that the presence of women in male correctional institutions has a calming effect on the men. They argued that the prison should be seen as a microcosm of society, with both males and females providing good role models. In response, the Special Rapporteur would point to the prevalence in United States society of violence against women generally, and sexual violence specifically, which raises particular worries about the use of male guards in female facilities.

58. The Special Rapporteur found that the reality in women's prisons failed to match the ideal described above. One of the many cases she heard about was that concerning prisoner S. who, in 1995, was cleaning the back stairs of the compound when officer X. grabbed and fondled her and kissed her. After that, he insisted on regular sexual encounters in different parts of the prison compound, and she complied because she was too frightened to refuse. She

performed all the sexual acts that he demanded. In February 1996, when she tried to break off the relationship, he threatened her and threatened her daughter. She therefore continued. Finally, the FBI, with the cooperation of S., began investigations against the officer and subsequently had him removed.

59. Though sexual misconduct remains a serious problem in United States women's prisons, recent court cases and awareness-raising campaigns have resulted in some encouraging changes, especially in the State of Georgia. The warden at Bedford in New York informed the Special Rapporteur of the increased understanding of the issues, which has reportedly led to positive changes. The Federal Government prohibits sexual intercourse or sexual contact with a prisoner by a prison employee. Under Title 18 of United States Code, section 2241, sexual intercourse by the use or threatened use of force is a felony with the maximum penalty being life imprisonment. Section 2243 prohibits consensual sexual contact between a person in custodial, supervisory or disciplinary authority and the person supervised. According to Human Rights Watch, 27 states and the District of Columbia have expressly criminalized sexual intercourse with, or sexual touching of a prisoner by prison staff. These developments took place in the 1990s after many complaints had been made by prisoners and NGOs interested in prisoners' rights. The Prevention of Custodial Sexual Assault by Correctional Staff is a bill currently being discussed in the Congress; it would provide funds to state governments for setting up prevention programmes with regard to custodial sexual assault, including the maintenance of databases.

60. The State of Georgia has set up procedures to deal with sexual misconduct which may be relevant elsewhere. The development of these procedures was a response to the Cason v. Seckinger case in which 10 women, identified only as Jane Does, brought a class-action suit complaining of rape, sexual assault, coerced sexual activity, involuntary abortions and retaliation. The shocking revelations forced the court and the Department of Corrections to make sweeping changes. First, they closed the prison and created new prisons for the women. They argued that only women should guard women, but this was successfully opposed by trade unions. They created gender-specific posts and ordered that men entering the women's housing units had to announce themselves. There are notices all over the prison citing the Cason case and demanding compliance.

61. Corrections officers have to sign statements that they agree with the Cason conditions. Staff failing to report sexual misconduct may also be punished. A special unit has been set up in the Georgia Department of Corrections to deal exclusively with allegations of sexual misconduct. If the allegations are found to be true, the unit will terminate the person's contract and turn the case over to the prosecutor's office. Pre-screening of corrections officers has been introduced to assess their behaviour in this regard. Corrections officers are now given eight hours of training on sexual misconduct and eight hours of training on sexual harassment. All inmates in Georgia prisons interviewed by the Special Rapporteur told her that after Cason, they had seen a welcome change with regard to the attitude of corrections officers.

62. Georgia's response in this case was commendable. Unfortunately, no figures in respect to the number of individuals terminated or prosecuted could be provided to the Special Rapporteur. The NGOs welcomed the reforms instituted after Cason; they reported, however, that although the framework was now in place, action was not being taken. Women rarely come forward since they fear retaliation; further, women ask, who would believe a felon? Nevertheless, the reorganization in Georgia as a direct result of the Cason class action suit was unique.

63. Though the Cason provisions address unwanted sexual advances, there remains the problem of the right of women prisoners to privacy. The Special Rapporteur's visit and discussions with women in prisons all over the country have convinced her that the presence of male corrections officers in women's housing units is a direct violation of the right to privacy. The modesty panels on showers and shower curtains in some prisons are inadequate to ensure privacy. Women complained to the Special Rapporteur that they were watched in the toilet, in the showers and while they were undressing. They reported that the male presence was extremely intrusive. In addition, in most of the prisons, men reportedly pat-frisk the women, while women guards conducted strip-searches. In Connecticut, women inmates reported that they don't go to the cafeteria to avoid being pat-frisked by male guards. Many inmates reported that they felt that pat-frisks by men were very intrusive.

D. Health care

64. Women prisoners in many cases have distinct health-care needs, particularly in light of the high levels of pre-incarceration violence experienced by many of them. As pointed out in the briefing paper on the subject prepared for the Special Rapporteur by David Chavkin of American University Law School, unlike young men, women in the age group 18-40 clearly have special medical needs. The mere replication of health services provided for male prisoners is therefore not adequate.

65. Violence against women, especially sexual violence, has numerous short- and long-term reproductive health consequences for women. As such, women prisoners represent a high-risk group for reproductive health problems. Practically all the women interviewed complained of deficiencies in obstetrical and gynaecological services. In most of the prisons visited by the Special Rapporteur, the gynaecological consultant came only once a week, which was seen by the women to be inadequate. The Special Rapporteur was told of women who were denied reproductive health services such as abortion in States where abortion is legal. The Special Rapporteur was also told that Pap smears and manual breast examinations were not regularly performed. The briefing paper stated that women prisoners had an enhanced risk of reproductive system cancers and similar diseases.

66. Of the prisons visited by the Special Rapporteur, only Danbury, a federal penitentiary in Connecticut, has programmes to address the needs of victim-survivors of violence against women. Due to the prevalence of violence in the lives of women prisoners, women's prisons may require a gender-specific framework for health care which emphasizes reproductive health, mental illness, substance abuse and counselling for victims of physical and sexual abuse.

67. In many of the facilities visited by the Special Rapporteur, there was a woeful lack of care for women with mental illnesses. Except for Bedford Hills in New York, none of the prisons was equipped to deal with large-scale mental health problems. In light of recent trends towards deinstitutionalization, women with mental illnesses are increasingly being found in prisons. This makes the lack of such services particularly problematic. Furthermore, mentally ill women are at high risk of sexual abuse in custodial settings. Consequently, it is imperative that prisons have adequate facilities to meet the needs and ensure the protection of such women.

68. The Special Rapporteur heard complaints, especially in the State of California, about unequal treatment of patients with terminal illnesses. Professor Chavkin's paper documents cases of AIDS victims being shackled to their infirmary beds or their wheelchairs. In Chowchilla, no autopsies are performed on AIDS victims.

E. Parenting

69. Despite the fact that the overwhelming number of women in prisons are mothers, there is no consistency among the states and even within institutions in dealing with this issue. Georgia does not encourage bonding between an inmate and her child, since officials believe that such a bond is not in the best interests of the child. Georgia prefers to put the child in foster care. However, Pulaski State Prison in Georgia has a dynamic warden; Pulaski has a children's centre and is attempting to arrange transport for children to visit their mothers. Although in other prisons in Georgia, basic visiting rights are permitted and nurseries are provided, there were no creative programmes that encouraged mother-child bonding. The same was true in California and Michigan.

70. Bedford, New York and Minnesota, on the other hand, encourage the link between mother and child with creative programmes. In Bedford, children are transported once a week to visit their mothers. There are trailer units where some inmates can spend time, including weekends, with their children. There is a programme whereby mothers can record themselves reading a children's story and the cassette sent to the child. There is also a programme on long-distance mothering to help inmates with children cope with their problems. However, it must be recognised that these programmes are run by private Christian charities and are not a part of government policy. In Minnesota, weekend visits are also encouraged and there are separate apartments where inmates can spend a longer time with their children.

71. One of the most difficult problems attendant upon putting mothers in jail is the destruction of the family unit. The foster care option may lead to the permanent break-up of the family. For many inmates, children are a life-sustaining force. To break that bond is punishment of the worst kind. The location of many prisons in some cases prevents visitation by children who cannot afford to visit at regular intervals.

72. When one mother was arrested, her son went berserk. At the time, he was 12 years old. He ended up in a juvenile penitentiary with 71 charges, from burglary to grand larceny, against him. By September 1997, he was one of the most wanted men in America. A minister brought him into a rehabilitation

programme. He is now a leading athlete and member of the Olympic team. Explaining his early life of crime, he said, "I wanted my mama. When she was taken in, I had nothing to live for". The effect of large-scale incarceration of African American women is having a major impact on the African American family. Research and analysis in this regard should be pursued. The Special Rapporteur was quite moved, in speaking to many of the inmates, by the importance they placed on their children. It is necessary to develop parenting programmes in prisons throughout the United States along the lines of those started in New York and Minnesota.

F. Grievance procedures

73. In each institution the Special Rapporteur visited, she asked staff as well as inmates, about the grievance procedure within the institution. With the exceptions of Minnesota and Georgia (after Cason), no states have grievance procedures that rely on outside monitoring. Most grievances are addressed within the institution, with a great deal of discretion vested in the warden. Many grievances are dealt with through informal counselling by the officers within the institution, with the assistance of the warden. The Special Rapporteur feels that in situations of a captive population, the need for outside review cannot be underestimated.

74. Most of the inmates said that they had no faith in internal grievance procedures. They were also afraid of retaliation. If someone brings a charge of sexual misconduct against an officer, she is usually removed to administrative segregation or solitary confinement, allegedly "for her own protection". Such segregation is experienced as punitive. Additionally, many inmates reported that staff in the administrative segregation, out of loyalty to the accused officer, are often abusive to the inmate who has complained. It is for reasons such as this that outside review should be an essential part of the monitoring of inmates' complaints.

G. Impunity and corrections officers

75. Corrections officers and officials are reported to enjoy a high level of impunity. The Special Rapporteur was informed that in all the states visited, except for Minnesota, corrections officers had a very strong trade union with important political connections. She was told, for example, that in Michigan one of the reasons why the political institutions of government were so averse to reform was their dependency on the block vote of those involved in corrections. Prisoners, on the other hand, are not a voting constituency. This situation creates a climate of impunity and may help to explain why officers who transgress rules are more often transferred than terminated.

76. The training of corrections officers is an essential part of any strategy to combat impunity. The National Institute of Corrections, created in 1974 to provide direct services in the field of corrections, has developed an excellent training programme under the guidance of Ms. Andie Moss. It is still uncertain how states will respond to this programme. Perhaps the Federal Government can provide some sort of incentive to states to request training of their staff, especially in the area of sexual misconduct. In their interviews with the Special Rapporteur some corrections officers who had

undergone training seemed very well informed of what action they should take in cases of sexual misconduct, while others were less sure, even in Georgia where extensive training has begun in response to the Cason decision.

77. Another relevant aspect is that in many states there is no pre-screening and corrections officers are hired with only minimum qualifications. Given the fact that they will be guarding a captive population, they should be pre-screened, especially with regard to histories of violence.

H. Private industry

78. In all the federal prisons and some of the state prisons, labour is performed by the prison population. In the case of federal prisons, inmates work in industries whose output is absorbed by the Federal Government. In some states, including Minnesota, the Special Rapporteur found private garment and computer industries involved in the prisons. Although such work gives prisoners some pocket money, their salaries are far below the minimum wage and it has implications for economic and social rights, particularly of women. Such activity also affects the comparative advantage of those industries that do not rely on prison labour. If private industry is to use prison labour it should conform to minimum wage requirements and ensure that the wages are received by the inmates themselves.

I. Privatization of prisons

79. The privatization of prisons raises particular concerns for the safety and well-being of prisoners in general, and of women prisoners in particular. The only private facility visited by the Special Rapporteur was the INS facility in Elizabeth, New Jersey. The emphasis of the facility seemed to be on security more than anything else, despite the fact that many inmates were not violent offenders. Rather, many of the inmates were immigrants in the country illegally and awaiting deportation. There were no projects for the women and no programmes. Most of the women spent their time sleeping, since there was very little activity. The Special Rapporteur is concerned that private prisons will not provide the humanitarian and rehabilitation programmes that are now essential aspects of prison life. If privatization is to be allowed, there must be strict guidelines and oversight so that the profit motive does not interfere with health and medical services, education, training and cultural programmes for inmates.

V. SPECIFIC FINDINGS

A. California

80. In California, the Special Rapporteur visited the California Correctional Women's Facility (CCWF) and Valley State Prison for Women (VSPW) in Chowchilla, California. The Special Rapporteur strongly regretted that she was not able to interview the specific women prisoners she had requested to meet and that she was not allowed to visit the Security Housing Unit at VSPW despite prior assurances that she would be able to visit the prison grounds freely. The Special Rapporteur had clearly indicated in her letter to the California Department of Corrections in May 1998 that she would like to interview women prisoners during her visit. In addition, the California prison authorities refused to discuss openly with her the allegations of mistreatment and abuse at CCWF and VSPW which are reflected in this report.

81. The Special Rapporteur has learned that Mr. Kuykendall, warden of VSPW, has, since her visit, been "walked off the grounds" and suspended from his duties pending an investigation into financial mismanagement. This incident underlines the Special Rapporteur's strong belief that qualified personnel with a sufficient degree of professionalism are required for any effective correctional system.

82. At the Central California Women's Facility, CCWF, the Special Rapporteur was informed upon arrival that not all prison grounds would be available for inspection due to a bomb scare on the premises the day before and that she would not be allowed to speak to the women prisoners whose names she had provided to the warden in advance. The Special Rapporteur is dismayed at this lack of cooperation extended to her by the CCWF management which prohibited her from gathering all necessary information to evaluate the situation objectively.

83. The Special Rapporteur is concerned that the attitude of the California correctional authorities seems largely to be that reflected in the 1977 revision to section 3000 of the California Penal Code which expressly changed the objective of prisons from "rehabilitation and punishment" to "punishment" only. In addition, the introduction of mandatory minimum sentences for drug-related offences in California courts (as well as in federal courts) is clearly the reason why 70 per cent of the women in California prisons are incarcerated for non-violent offences. Previously, women with children were granted extended probationary sentences in order to avoid separation from their families. At the same time, mandatory sentencing statutes like the "Three Strikes" rule, which imposes a 25-year-to-life sentence for people already convicted of three felonies, are further increasing the number of women in prisons. The increasing harshness of the political climate is further reflected in the fact that, of the $21,000 per prisoner per year spent in California, approximately $11,000 (or 52 per cent) is for security measures, approximately $3,125 (or 14 per cent) for health care and only some $900 (or 4.5 per cent) for education and training. 27/

84. According to information received from NGOs, the guards' or corrections officers union is one of the strongest political forces in the State of California, while the California Department of Corrections is the biggest government agency in the State with increasing power to influence local elections and state legislation. The Special Rapporteur is concerned at this disproportionately influential role of those concerned with prison management in California, especially where this is to the detriment of prison conditions in the state.

85. California has the largest number of women incarcerated in the United States. At VSPW, there were 3,350 women at the time of the Special Rapporteur's visit, of whom approximately 30 per cent were White, 30 per cent were African American, 30 per cent were Hispanic and 10 per cent were women of other ethnic origins. Their average age was between 30 and 33 years. The average sentence of the women at VSPW was approximately three years, mostly for drug-related and other non-violent crimes. Of the 350 corrections officers at VSPW, only 30 per cent are female. The majority of officers are White; only 18 per cent are Hispanic and 12 per cent African American.

86. CCWF has a prison population of 3,597, of whom 40 per cent are African American, 30 per cent are Hispanic, 20 per cent are White and the rest are of other ethnic origins; 60 per cent of the general population are detained under minimum security and have been committed for mainly drug-related, non-violent crimes for an average duration of 3½ to 4 years. There are 360 correctional officers, of whom some 30 per cent are female; 20 per cent are African American and 20 per cent are Hispanic.

87. California appears to have inadequate administrative or penal protection against sexual misconduct in custody. This is compounded by the fact that the California Department of Corrections has no comprehensive procedures for reporting or investigating allegations of sexual abuse in its facilities. Sexual misconduct in custody was criminalized only in 1994. The Special Rapporteur observed that prison management at CCWF and VSPW still used the term "overfamiliarity" to refer to acts of sexual abuse, harassment and assault. The Special Rapporteur feels the use of this euphemism obscures the serious nature of the acts concerned.

88. The State of California prohibits sexual intercourse between prison staff and prisoners, the first violation constituting a misdemeanour and the second, a felony. Title 15 of the California Director's Rules Governing the Department of Corrections and the Treatment of Prisoners vaguely refers to the prohibition of "personal transactions with prisoners, parolees and their relatives" 28/ In this connection, the Special Rapporteur's attention was drawn to an initiative taken by the warden of CCWF in a memo to all prison staff dated 24 July 1995, which attempted to clarify these legal caveats by spelling out her expectations concerning relations between staff and prisoners, in particular relating to unauthorized physical contact, verbal or written communications or involvement with inmates or parolees.

89. With regard to grievance procedures for sexual misconduct, the Special Rapporteur was informed that under section 3084 of the California Administrative Code, prisoners may complain about "any departmental decision, action, condition or policy perceived by the prisoner as adversely affecting their welfare". To report a grievance, inmates may fill out a special form, report in writing directly to the Investigative Officer, or notify any staff member at the facility of their concern. Staff members are required to report any grievances brought to their attention to the Investigative Officer, who informs the warden or deputy warden. The allegations are subsequently investigated, confidentially and internally. The Office of Internal Affairs of the California Department of Corrections also may decide that a given investigation should be carried out by an independent investigator. The warden stated that allegations relating to sexual misconduct that are proven conclusively have led to a significant number of terminations of service of prison staff. He was also of the opinion that the grievance procedure was not normally used by prisoners for false purposes or "to get back at someone". The failure by staff to inform prison management of any allegations was punished accordingly.

90. Corrections officers receive eight weeks of basic training, which includes a component on sexual misconduct procedures, as well as on "overfamiliarity" issues. In addition, the California Department of Corrections provides for annual refresher training which includes two hours of

training on "overfamiliarity". The Special Rapporteur considers this training to be inadequate for the purposes of sexual misconduct, including sexual harassment, abuse and rape; the two-hour refresher training on "overfamiliarity" does not seem to nearly suffice to cover these concerns in detail.

91. The Special Rapporteur was informed that at VSPW pat-frisks are carried out by male and female corrections officers, whilst strip-searches are only carried out by same-sex officers. In view of the large number of women at VSPW, female officers should be actively recruited in order to ensure that both strip- and pat-searches are carried out solely by females. The Special Rapporteur was able to confirm allegations that in the receiving area at VSPW, strip-searches are carried out in a big room with large windows, enabling male corrections officers to watch. It was also alleged that cross-gender teams are used for strip-searching, the male corrections officers restraining the woman prisoners whilst the search is carried out by a female officer.

92. At CCWF, the Special Rapporteur was also informed that pat-searches were carried out by both male and female officers and that strip-searches were mostly carried out by same-sex officers "except in emergencies". The Special Rapporteur considers that this exception is open to abuse and that stricter criteria for same-sex searches should be established in order to minimize the potential for abuse. CCWF prison management acknowledged that cross-gender guarding certainly created problems and that there were too few female corrections officers. He referred to a case that had occurred in 1996 when a female inmate assigned to porter duty was repeatedly taken into a closet by a male corrections officer who exposed himself to her. He was subsequently dismissed.

93. With regard to privacy issues at CCWF, the Special Rapporteur, during her visit of the housing units, was concerned that there were no shower curtains, but only so-called "modesty doors" or panels in the showers, which were located in the middle of the housing unit, immediately in front of the desk of corrections officers, most of whom were male. The structure of the housing units at CCWF also lends itself to invasion of privacy by officers on duty.

94. With regard to sexual misconduct at CCWF, the deputy warden informed the Special Rapporteur that prison management vigorously pursued all allegations of sexual misconduct and that there had been 10 major cases, only one of which had resulted in a conviction. Most cases resulted in termination of the staff involved. The grievance procedures consist of a formal appeals system at four levels, namely, informally to the staff, to the appeals' coordinator, to the warden or directly to the Director of the California Department of Corrections. An in-house investigative unit had been established to look into allegations of misconduct.

95. With regard to allegations of inhuman conditions in the Special Housing Units at VSPW, the Special Rapporteur received information from California Prison Focus, a non-governmental organization which started to investigate complaints of women in the units in 1995 that they were continuously exposed to light for days; that the noise level, caused by the screaming of the mentally ill inmates held in the same cellblock, was unbearable; that fights

occurring in the courtyard were stopped by the guards by shooting rubber or wooden bullets. In one incident, a prisoner's ear was shot off and her neck injured. Bean-bag bullets were tested, but a woman was severely injured and left to bleed for five days, as a result of which she is permanently disfigured. Bean-bag bullets have not been used since.

96. The Special Rapporteur is seriously disturbed by allegations concerning the lack of privacy in the Units. Women prisoners interviewed by representatives of California Prison Focus in the week prior to the Special Rapporteur's visit alleged continuing sexual abuse and harassment, in particular by male corrections officers in the "shower bubble". A group of women prisoners had previously filed a group grievance about the fact that they were not allowed to take towels into the showers, which are only covered by modesty panels. The grievance also alleged that officers on duty were able to observe the women in the showers from the control booth in the Units, which is 10 feet off the ground. The Special Rapporteur was informed that in reply to the grievance the prison management simply stated that, based on an evaluation of the shower situation, the modesty panels were considered to respect privacy and that the request for female guards in the control booth was denied.

97. In addition to the shower area, the pervasive invasion of privacy in the bathrooms was brought to the Special Rapporteur's attention. Officers sitting on the wall of the bathroom have an unobstructed view of women sitting on the toilets, which the Special Rapporteur considers intolerable, unacceptable and unnecessarily intimidating and humiliating.

98. All the women prisoners from the Units who were interviewed mentioned in particular one corrections officer called Pierre. It was alleged that Pierre, with the acquiescence or sometimes active participation of other officers, made sexually explicit comments to the women, rubbed his genitals against women when they were handcuffed and pressed his genitals against the windows or food holes of the cell doors, saying "this is what bitches like and I am going to stick it up your ass". One woman alleged that she had filed a grievance against one of Pierre's colleagues, a female officer, and that she had subsequently retracted her claim because Pierre had retaliated by breaking all her personal belongings, tearing her photographs and destroying her earphones. The Special Rapporteur also received information that Pierre is allegedly a member of the Black Gorilla Family, and sometimes threatens and targets women prisoners who are known to be members of rival gangs.

99. It was also alleged that women in the Units live in constant fear of rape and that although strip-searches are carried out by female officers, male guards are often present and subsequently discuss the women's bodies in public in the cells and the housing units. Some women reported having sexual relations with corrections officers assigned to the Units who were suspended from duty but later returned on posts amongst the general prison population.

100. Another serious concern which was drawn to the attention of the Special Rapporteur is that, unlike in Georgia, the CDOC has no maximum limitation of the detention period in administrative segregation. This is

particularly disconcerting since it is reported that many women are placed in administrative segregation for unlimited periods for having resisted sexually invasive pat-frisks.

101. The Special Rapporteur has a general concern with regard to health services in California correctional facilities. Also unlike Georgia, medical staff in California prisons are employed by the Department of Corrections and not by the public health authorities. In an increasingly conservative prison management climate in the state, where more and more resources are being spent on security, health services are neglected and budget cuts have adversely affected inmates' health.

102. In 1995, a class-action lawsuit, Shumate v. Wilson, was filed on behalf of all the women incarcerated at CCWF and at the California Institution for Women, alleging that the medical care provided to women at both prisons was so seriously deficient as to constitute routine denial of the prisoners' right to be protected from cruel and unusual punishment, as provided by the Constitution. The suit alleged that the state seriously endangered women prisoners by, inter alia, limiting sick calls, using unqualified medical personnel to screen inmates seeking medical attention; denying medical care because of its cost; breaking confidentiality requirements and failing to provide appropriate chronic care management. Relief was sought from the state for "knowing and deliberately indifferent failure to provide necessary medical care for serious medical needs".

103. Legal Services for Prisoners with Children, a San Francisco-based non-governmental organization, began receiving letters from women inmates at CCWF in 1990, almost as soon as it opened. Many of these complaints were used in the Shumate case, including the case of leading plaintiff Charisse Shumate. Shumate has sickle-cell anaemia, heart problems and hypertension and was not provided with consistent medical care at CCWF; she lapsed regularly into a crisis situation and had to be rushed to the community hospital for emergency care. Another plaintiff who had entered CCWF with severe burns on over 54 per cent of her body gradually lost mobility in her limbs because she was denied the use of special bandages which would have prevented her burnt skin from tightening. A 38-year-old woman with HIV was tested when being held at a county jail. Upon arrival at CCWF she was confined to lock-up for nearly two months until her diagnosis was confirmed. In lock-up, the plaintiff complained of illness for 10 days until she fell into a coma. She was not examined once during those 10 days. After lapsing into a coma she was diagnosed with meningitis. One woman prisoner had complained of lumps in her breasts for a long period, in different facilities. It was only after one of the lumps had started to protrude from under her skin, 10 years after she had first signalled her concerns to prison medical staff, that a biopsy was carried out. Her cancerous breast was removed and one year thereafter her other breast had to be removed as well.

104. These are only few of the cases that provoked Shumate which were brought to the Special Rapporteur's attention and which deeply concern her.

105. In July 1997, the parties to the lawsuit reached a settlement under the terms of which an independent assessment team would scrutinize the health-care system at the prisons for at least eight months. Under the settlement, the

California Department of Corrections did not admit to any charges but agreed to fulfil certain requirements, including: making timely referrals to doctors for patients needing urgent care; prohibiting untrained employees from making judgements about medical care; ensuring that inmates receive necessary medication without delays; offering preventive care, including periodic physical examinations, pelvic and breast exams, Pap tests and mammographies; and protecting the privacy of medical records.

106. It concerns the Special Rapporteur that the Shumate case was one in a series of class action lawsuits brought against the California Department of Corrections in the last 10 years, all of which have alleged, and most of which have been found to be justified, that the state fails to provide adequate medical care, mental health treatment and disability access in California women's prisons. It is even more worrisome that many of the non-governmental organizations with whom the Special Rapporteur spoke were not satisfied with the improvements made after the Shumate settlement.

107. Over 400 women out of 3,350 women detained at VSPW are mental health patients on medication. These women are currently housed among the general prison population, but a departmental discussion was going on at the time the Special Rapporteur's visit about whether to segregate them. In the Special Housing Units at VSPW, it was alleged that over 50 per cent of the 54 women detained there at the time of the Special Rapporteur's visit were taking psychotropic medication.

108. At any given time, there are approximately 100-175 pregnant women prisoners at VSPW. The medical staff of the facility consists of 70 health-care professionals, including three gynaecologists, one obstetrics nurse, one practitioner with a gynaecological/obstetrics background, one resident general surgeon, a plastic surgeon, an orthopaedic surgeon and three additional physicians, as well as six full-time dentists. The average case load per counsellor is 100. The warden confirmed to the Special Rapporteur that it was state policy to shackle women prisoners to their beds in the community hospital before and after they give birth, and said that pre- and post-natal care were provided.

109. The medical clinic at CCWF has two medical technical assistants, one nurse and two dental staff. The Special Rapporteur was concerned that there was only one resident physician and one gynaecologist for a total of 3,597 inmates. There were no management personnel at the CCWF health services and it is only since the Shumate settlement that the facility has had three physicians on staff. Information received by the Special Rapporteur, however, alleges that conditions of medical care have not significantly improved since Shumate and that there are still two- to six-week delays in receiving medication for chronic diseases and that HIV+ women do not receive their medication systematically. Another concern which the Special Rapporteur wishes to raise is that there is no Spanish-speaking medical staff at CCWF, which is unacceptable in view of the fact that 30 per cent of the women prisoners are of Hispanic origin. In addition, the qualifications of the medical technical assistants are doubtful and there still are reportedly constant access problems to the sick-call windows. Complaints by the women are replied to with "just blame Shumate; if she'd kept her mouth shut, we would do what you want".

110. Women, including HIV+ women, who are on medication and enter the prison, must be rediagnosed at the reception centre before they can receive further medication. Since the waiting period for a rediagnosis can take over one month, women are cut off from medication for that time. Women therefore sometimes share their medication in an effort to help out. If they are caught, however, they will be charged with the serious offence of drug dealing. In one case, it was alleged that a HIV+ woman prisoner in the infirmary got shingles and was not treated until the infection spread to her eyes; she is now blind.

111. The Special Rapporteur was informed that prison management found it difficult to keep the community programmes offered at VSPW running because most prisoners were disqualified from participating for various reasons, including violent backgrounds, extended sentences, child abuse, or for having attempted to escape. The programme for conjugal family visits, for example, provides women with minimal- to medium-duration custody and a clean disciplinary record a 72-hour visit every three months. (CCWF has five conjugal family visit units, which are available to women under similar conditions.) Programmes for battered women and for substance abusers are also offered. In addition, VSPW operates a mother-infant care programme outside the prison with room for 98 women; this programme operates in a halfway or transition house for women to facilitate their return to the community.

112. The Special Rapporteur was informed that parenting programmes had been cut at CCWF and moved to VSPW. CCWF, however, does have one new programme, a 200-bed residential therapeutic community programme for substance abusers. Women in this programme spend one half-day in programmes and one half-day in substance abuse-related rehabilitation. A programme entitled "Friends Outside" provides for a supply of books and toys for the children's play room but there are no structured activities for children and mothers.

113. Also of concern to the Special Rapporteur is that many women prisoners are assigned to the family reunification programme under which they have to appear regularly in court. With the exception of the first time, the prison management has no obligation to take the women to hearings, which often results in hearings being missed. Sometimes the notification of the hearing arrives too late. Another concern is the new tendency in the State of California to terminate the parental rights of long-term prisoners as early as possible in order to increase chances of adoption. Non-governmental organizations working with imprisoned women informed the Special Rapporteur that many foster and adoptive parents denied the child contact with his or her parents or never informed the child of the fate of his or her parents. Another inequality of the system perpetuating family break-ups is that foster care families receive $800-$900 per month for each child in their care, whereas extended families or relatives of an imprisoned parent receive only $200-$300 per child.

114. CCWF operates an adult education programme called Sierra Vista Adult School which provides both vocational and academic training, with a total of 1,120 places. In addition, special programming, including self-help groups, parenting, self-awareness and preparation for release groups, followed by a job placement programme for release, is available. The facility also has two computer laboratories with personal computers for the inmates' use. A

battered women self-help group is conducted by outside community shelter workers. The educational programme on offer at CCWF seems comprehensive and practically oriented, and should serve as an example for other female correctional facilities in the country.

115. During her visit to California, the Special Rapporteur received invaluable information from a number of non-governmental organizations working with women in prisons, most of which she has incorporated in this report. The Special Rapporteur is particularly grateful to these organizations for providing her with information since she was not personally able to gather data first-hand. Two of those organizations are Legal Services for Prisoners with Children, mentioned above, which was established in 1978 to assist imprisoned parents, explore alternatives to prisons, and act on behalf of pregnant women in connection with the provision of medical services. Families with a Future is an organization created by Ida, a formerly incarcerated woman who served 10 years at Dublin Federal Correctional Institute, separated from her five children. The organization tries to put children in touch with their mothers serving long-term prison sentences. From her own experience, Ida knows that the first year after release is the hardest: the children have grown up and they are angry for having been "abandoned" by their mother. Ida's children told her that they hated going to visit her in prison when they found out that she had to go through pat- and strip-searches before and after every family visit. At a meeting with Families with a Future, the Special Rapporteur had the opportunity to listen to children with incarcerated parents and to try and understand the enormous implications that the imprisonment of a mother or a father has on the whole lifetime of a child.

B. Georgia

116. In Georgia, the Special Rapporteur met with officials of the Georgia Department of Corrections (GDOC) and with representatives of non-governmental organizations working with women in prisons. She visited Metro State Prison in Atlanta, as well as Pulaski and Washington State Prisons in southern Georgia. The Special Rapporteur spoke with the wardens and their staff at the prisons and was able, at her request, to interview a number of female inmates, as well as corrections officers. The Special Rapporteur would like to express her appreciation to the GDOC officials who facilitated her visit and engaged in an open and constructive dialogue with her.

117. The GDOC officials with whom the Special Rapporteur spoke referred to a massive influx of female detainees in the mid- and late-1980s for which the Department's facilities were not prepared. Similarly, the realization that female inmates might have different needs than male prisoners was slow to emerge. In addition, the increase in the number of inmates who had been previously diagnosed with mental illnesses also contributed to the circumstances that led to the neglect and overcrowding in Georgia prisons at that time, resulting in the unacceptable conditions for prisoners brought to light in Cason v. Seckinger (see paragraphs 60-63 above). (The present report will not specifically address the conditions in Georgia state prisons before Cason, especially since the 1996 Human Rights Watch report, "All Too Familiar: Sexual Abuse in US State Prisons", has addressed these concerns in great detail.)

118. As has been noted, Cason was prompted by complaints of alleged rape, sexual assault and coerced sexual activity, involuntary abortions and retaliation or threats of retaliation against women who refused to participate in sexual activities within the prison. Following Cason, the Georgia Department of Corrections was required, by federal court orders, to undergo substantive reforms, including undertaking initiatives to eliminate and prevent sexual misconduct in Georgia's correctional facilities for women. In this context, the Special Rapporteur was able to confirm that, although prior to Cason, sexual abuse and harassment were widespread in women's prisons in Georgia, in particular at the Georgia Women's Correctional Institution (GWCI), the situation has improved and awareness about the seriousness of sexual misconduct in prisons has greatly increased.

119. In June 1998 the prison population in Georgia consisted of approximately 37,000 men and 2,400 women, of whom two thirds were African Americans, a ratio which is disproportionate to the number of African Americans in the state's population. The majority of women in prison are uneducated (79 per cent do not have a high school diploma), unskilled, low-income, substance-abusing mothers.

120. The type of sexual misconduct that prevailed before Cason was graphically described by some of the inmates. According to Georgia criminal law, sexual contact with a person in the custody of the Georgia Department of Corrections has been punishable as a felony since 1983. According to section 16-6-5.1 of Georgia's criminal code, a person commits sexual assault when "he engages in sexual contact with another person who is in the custody of the law ... or who is detained in an institution and such actor has supervisory or disciplinary authority over such other person". "Sexual contact" is defined as "any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor" (sect. 2020.1).

121. The Cason v. Seckinger consent order*, addressing mainly sexual misconduct, as well as physical and mental health practices, and applicable to three women's and five men's prisons in the state, was signed by the GDOC in March 1996. Following the consent order, the Department initiated a number of measures to improve conditions in the areas mentioned. Ms. Elovich, Director of Women's and Juvenile Services at GDOC, told the Special Rapporteur that the Department had received clearance for its mental health services from the federal auditors in June 1998, and clearance for physical health was expected later in the year.

122. With regard to sexual misconduct, the plaintiffs' counsel was monitoring compliance by the GDOC. In particular, the standard operating procedures of the GDOC, which specifically distinguish sexual misconduct from personal dealings and define what actions constitute sexual contact, sexual abuse and sexual harassment, are an important move forward, creating a framework within which sexual misconduct in Georgia prisons can be systematically investigated.

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* In United States law, a consent order is one whose provisions have been agreed to by all the parties to an action.

123. The GDOC conducts an obligatory Basic Correctional Officers Training Course over a period of four to five weeks for all corrections officers, which includes a minimum of eight hours of training on sexual misconduct and additional sexual harassment training. An annual mandatory "refresher" course for corrections officers includes three hours of teaching on sexual misconduct.

124. The grievance procedure relating to sexual misconduct in Georgia women's prisons is supervised by the Special Investigations Unit and the Women's Services Unit of the GDOC. Since November 1994, the GDOC has an improved sexual misconduct complaints procedure under which all staff members are obliged to report any allegations of which they are aware directly to the warden. This procedure provides for new standard operating procedures ("SOP") for investigating allegations of sexual contact, sexual abuse and sexual harassment within the prisons. The Special Rapporteur was informed that all housing units in the prisons have boxes in which grievances can be placed. In cases of sexual assault, medical staff are available to assist the victims and counselling is provided. The warden will normally refer cases pertaining to allegations of sexual abuse of women prisoners to the Director of the Women's Services Unit, who subsequently transmits them to the Special Investigations Unit. The GDOC investigators conduct interviews to determine the substance of the allegation and the case, if substantiated, is reported to the Commissioner and to the District Attorney for action. If a staff member is involved, he or she is immediately suspended from duty until a decision is reached in the case. If a staff member is found to have withheld any information concerning allegations of sexual misconduct, he or she is reprimanded in writing for failure to comply with his or her obligation to report any such information.

125. An improvement in the SOP relating to sexual misconduct is the regulation that a victim may be placed in protective administrative segregation during the investigation for a maximum of seven days. In cases where the allegation proves to be false or no evidence is found, the prisoners who filed the complaint will have a disciplinary infraction noted in their records. Within the context of the confidentiality of the grievance procedure concerned inmates are informed in writing about the process and its outcome. Officials working in the Special Investigations Unit were of the opinion that the grievance procedure is often abused by inmates "to get back" at other prisoners or prison staff. The Unit reported that they had received 131 cases of sexual misconduct in 1996, 137 in 1997 and 67 in the first half of 1998. Yet, since April 1996, only three cases had been prosecuted by the District Attorney.

126. At the time of the visit of the Special Rapporteur, there was one case of sexual assault at Pulaski State Prison, with the District Attorney's Office, allegedly involving a female-to-female assault. At Washington State Prison, it was estimated that two to three allegations of sexual misconduct were received per month; according to the warden, most of them were unsubstantiated. At the same time, however, it was considered easier and more impartial for special investigators to carry out the investigation than for prison staff to do it.

127. In response to allegations by Human Rights Watch that former employees who were dismissed for sexual misconduct have been rehired by the GDOC, the

Department emphasized that all rehired employees had been acquitted before being allowed to re-enter the system. Another concern raised by Human Rights Watch and which the Special Rapporteur was able to confirm in her interviews with women prisoners, is that the Jane Does of the Cason case who are still in the system fear retaliation. In particular, the Special Rapporteur's attention was drawn to the former Commissioner for Corrections, Bobby Whitworth, implicated in the Cason case, who had been reassigned to the Parole Board by the Governor. The Special Rapporteur is concerned that the direct involvement of a person implicated in the Cason case in parole decisions could have far-reaching consequences for any of the Jane Does who come before the Board.

128. Although in Georgia cross-gender guarding is permitted by law, all pat-frisking and strip-searches are governed by same-sex regulations and all transport officer posts in female correctional institutions are reserved for females. At Metro which housed 705 female inmates at the time of the visit of the Special Rapporteur, 75 per cent of the corrections officers were female and the prison staff assured the Special Rapporteur that same-sex rules were always applied in pat-frisking and strip-searching.

129. The Special Rapporteur is particularly concerned that a number of women she interviewed alleged that female corrections officers frequently touched women prisoners intrusively during the pat-searches and that sexual harassment by female officers could be as pervasive as by male guards. This is particularly disconcerting since most of the prisoners the Special Rapporteur interviewed at all prisons she visited in Georgia stated that they would avoid going to the cafeteria to eat warm meals for many weeks and months in order to avoid being intimately touched during the random pat-frisks outside the cafeteria which are carried out to prevent women from taking food to their cells. It was also alleged that some assignment details provided more room for abuse of women by corrections officers, such as the kitchen and laundry duties where women were sometimes alone with the officers. One of the women interviewed by the Special Rapporteur reported that a female corrections officer had locked her up in a closet, making comments with sexual overtones. The officer was subsequently dismissed after an investigation.

130. Most women interviewed by the Special Rapporteur stated that young women new to the criminal justice system or, at the other extreme, women with protracted or life sentences were more likely to engage in sexual relations with corrections officers in exchange for favours. The women at Metro generally complained of disrespectful treatment and verbal abuse by corrections officers, but confirmed the Special Rapporteur's findings that since 1992 incidents of sexual abuse and assault had diminished and that the prison administration was making efforts to address those issues.

131. The corrections officers whom the Special Rapporteur interviewed seemed adequately informed of the existing grievance procedures and two out of three were comfortable with reporting allegations and even rumours of sexual misconduct by their colleagues, through the appropriate channels, to the warden. (The Special Rapporteur did note the large notice boards publicizing the Cason consent order displayed in all the prisons she visited and that all corrections officers who had completed the sexual misconduct training had stickers on the back of their ID cards. Any officer without such a sticker

would not be permitted to enter a women's facility.) At the same time, the need for more workshops or training relating to sexual abuse and harassment was also raised.

132. Since the mid 1980s Georgia prisons have been receiving increasing numbers of mentally ill inmates for reasons already outlined. Many mentally ill people have been rendered homeless and engage in petty or violent crimes, and as a result move regularly in and out of the criminal justice system. As public opinion in the State does not support an increase in resources for prisons, inadequate rehabilitation and other services in correctional facilities leads to increased rates of recidivism. The Special Rapporteur is particularly concerned about the seeming "criminalization" of the most vulnerable population, resulting in an increase in the number of inmates and in a deterioration of prison conditions.

133. The Special Rapporteur considers it important that there should be an enhanced understanding within the GDOC that the medical and educational requirements of women in prison are different from those of imprisoned men and that health-care programmes should be designed with these in mind. The Special Rapporteur is particularly concerned that comprehensive pre-natal care is not offered to women in prisons and that women who give birth are allowed a maximum of 36 hours with their infants and must be shackled to the bed throughout their stay at the hospital, except during labour. The Special Rapporteur considers such treatment degrading and inhuman, especially in view of the fact that women prisoners are assigned security guards whilst in hospital.

134. Metro State Prison for Women in Atlanta is the central entry facility where the women entering the criminal justice system are screened for educational and vocational qualifications and given medical examinations. Metro also houses all pregnant inmates, who numbered 20 in June 1998. Metro has out-contracted to the town hospital for weekly gynaecological/obstetrical clinics.

135. Of the 705 women at Metro, 230 are being treated under the mental health programme, which covers patients at five levels of mental health diagnosis from outpatient to acute care and crisis stabilization. The Mental Health Unit also treats patients with a history of both physical and psychological abuse and women have the possibility to join groups or receive individual therapy, as well as a drug rehabilitation therapy.

136. At Washington State Prison, 20 per cent of the women prisoners have mental health counsellors and the care and treatment programme comprises courses on domestic violence (including for rape and incest survivors and battered women), parenting issues, crime victims, corrective thinking and pre-release issues. Since April 1998, Washington State Prison also offers special six-week PSAP (Programme for Substance Abusers in Prisons) courses during which women who are accepted to the programme live in special housing units together with counsellors. Washington State has on-site medical care for 12-18 hours a day and Pulaski State Prison is serviced by regional pharmacies and has nursery facilities.

137. Some of the women interviewed by the Special Rapporteur said that they have experienced long waiting periods for medical appointments and one woman alleged that she was not given an HIV test when she requested one.

138. At Pulaski, of the 1,108 women prisoners as of June 1998, 245 were classified as mentally ill. The Special Rapporteur is concerned about the disproportionately high percentage of such prisoners.

139. The parenting programme at Metro includes twice-weekly discussion groups to address various issues important for imprisoned women, including how to improve parent-child communication, as well as a child custody group which acts as liaison between the inmate and the community on social and legal issues and aims to protect mothers' rights while in detention. Contact visits between mothers and children are permitted twice per month in the visitation/play area, and six major children's events are organized to bring detained mothers and their children together on family holidays. Metro does not assist with the transportation of children to see their mothers, as did some prisons which the Special Rapporteur visited, which certainly poses a difficulty for many women whose children have no means or possibility to make their own way. While the parenting programme is accessible to all women, the right to use the parenting centre and its facilities may be suspended for 90 days in case of a serious disciplinary violation.

140. At Washington State Prison, the parenting programme is a nine-month programme addressing how to deal with particular family histories, the developmental stages of children and parenting methods, including legal issues relating to care givers. The Special Rapporteur is concerned that the programme is limited to 75 per three-month section for a total prison population in June 1998 of 856, of whom over 90 per cent were mothers.

141. At Pulaski State Prison, over 95 per cent of the women are mothers, most of them single parents, with an average of three children. In addition to a similar parenting programme, the Division of Social Services has given Pulaski a grant to subsidize transportation for children to see their mothers once a month.

142. The Special Rapporteur had a particularly fruitful discussion with two of the very few women activists in this field in Georgia who have founded non-governmental organizations for women in prison and their children. Donna Hubbard, the Executive Director of Revelation Seed Workshop, spent seven years in prison herself, has seven children and is a recovering drug addict. Her story illustrates that the correctional system is only equipped to address the problems, not the symptoms, of women in crisis. Georgia spends an average of $5,200 per inmate per year on security, and only $1,300 for rehabilitation. Donna herself had 29 accumulated arrests for substance abuse before being imprisoned for a longer period, without once being given drug rehabilitation treatment or a medical examination. Such situations contribute to the rising national total of women entering the criminal justice system, particularly in view of the fact that the recidivist rate is much higher for women prisoners than for men, reportedly due to drug dependency.

143. Revelation Seed Workshop provides for the first community contact that women have when released from prison, helping them to meet their basic needs

and develop their future. The staff of the Workshop are all formerly incarcerated women of different backgrounds, helping to build a community network for women in prison in order for them to have support when they are released. The organization has also established a "transition centre" with places for five women who are provided with housing, a mentor and a structured life outside prison, including health and medical services, courses on how to conduct themselves at an interview and write their résumés, and life-skills workshops. Stays are limited to six months and in the last stage the women are required to engage in 20 hours of community service, keep a journal and participate in family activities.

144. Aid to Imprisoned Mothers is a community-based organization founded 11 years ago which recognizes that, rather than punishing detained women further by withholding their children, contact with the children is an important way to reduce the number of women who return to prison. The organization emphasizes parenting programmes designed especially for the prison context and subsidies for the transportation of children to visit their mothers.

C. Michigan

145. As stated in the Introduction, on the eve of her visit to Michigan the Special Rapporteur received a letter from the Governor of Michigan cancelling her plans to meet with state representatives and her visits to women's prisons located in Michigan. This refusal was particularly disturbing since she had received serious allegations about misconduct in Florence Crane Women's Facility, Camp Branch facility for Women and Scott Correctional Facility for women. The Special Rapporteur nevertheless continued with her journey to Michigan and had meetings with lawyers, academics, former guards and former prisoners. She was also able to speak to some prison inmates on the phone to hear their complaints. Given the seriousness of the allegations, corroborated by diverse sources, the Special Rapporteur decided that these allegations should form part of her report despite the lack of cooperation from Michigan State authorities.

146. According to the Michigan Criminal Code, any sexual touching of a prisoner by an employee or a volunteer in the Michigan prison system is fourth-degree criminal conduct carrying a penalty upon conviction of imprisonment for two years. 29/ Thirty-one women have filed a class-action suit against the Michigan Department of Corrections alleging sexual assault, sexual abuse and sexual misconduct on the part of corrections officers and prison staff. They have been joined by the United States Department of Justice, which is also suing the Michigan Department of Corrections for violation of a federal statute, the Civil Rights of Institutionalized Persons Act. In September 1998, Human Rights Watch issued a report alleging that there was a campaign of retaliation against the women who were taking the Michigan Department of Corrections to court. 30/ Human Rights Watch alleges that:

> "Male corrections employees vaginally, anally and orally raped female prisoners and sexually assaulted and abused them. In the course of committing such gross abuses, male officers not only used actual or threatened physical force but also abused their total authority to

provide or deny goods and privileges to female prisoners to compel them to have sex or to reward them for having submitted to sexual acts. In other cases, male officers violated their most basic professional duty and engaged in sexual contact with female prisoners absent the use or threat of force or any material exchange. In addition to engaging in sexual relations with prisoners, male officers used mandatory pat frisks or room searches to grope women's breasts, buttocks and vaginal areas and to view them inappropriately while in a state of undress in the housing or bathroom areas. Male corrections officers and staff also engaged in regular verbal degradation and harassment of female prisoners, thereby contributing to a custodial environment that was ... highly sexualized and excessively hostile."

147. The Justice Department's investigations have corroborated these findings. In a report to the Governor of Michigan with regard to Crane and Scott Correctional Facilities, the Assistant Attorney-General argues that the constitutional rights of the prisoners have been violated. The report documents the following:

(a) There is sexual abuse by both male and female guards. Pregnancies have resulted from these activities and the authorities have punished women by revoking their parole. Nearly every inmate interviewed by the Justice Department reported various sexually aggressive acts by officers who corner inmates in cells and during work. Corrections officers are also said to expose their genitalia and make suggestive comments. Sexually suggestive comments and verbal abuse are so rife that they are treated as commonplace;

(b) Inappropriate pat-searches are conducted by corrections officers. During routine pat-searches the officers touch all parts of the women's bodies; fondling and squeezing breasts, buttocks and genital areas in a manner not justified by legitimate security needs. In addition, many searches are conducted when women are in their nightgowns in the evening;

(c) There is improper visual surveillance by the corrections officers. Many officers stand outside cells and watch prisoners undress and use the showers and toilets. Maintenance workers, in addition to corrections officers, are allowed to view women in various degrees of undress. The degree and kind of surveillance employed exceed legitimate security needs;

(d) The taking of urine samples is not according to proper procedure;

(e) The prison management has failed to provide adequate health care. There is no system to respond to medical emergencies, unqualified nurses are assigned to diagnose and treat medical problems and medications are prescribed without a professional medical examination. Inmates with specialized medical needs do not receive adequate medical care. There is also no real attempt to provide mental health services. Medical staffing is deficient at all levels. Some facilities have no full-time physician and insufficient and inadequately trained psychiatrists, nurses and medical specialists;

(f) The level of sanitation in these prisons is poor, including pest control in cooking and dining areas, inadequate ventilation, and lavatories and showers in a state of disrepair. The quantity of food served to inmates is also insufficient;

(g) There is a lack of due process in the prisons. The means of punishment and the placement of people in disciplinary segregation is arbitrary and the issuance of misconduct tickets is constantly abused by guards. Though there is a grievance procedure, the inmates have little confidence in the system and therefore rarely file grievances.

148. The findings of both the Human Rights Watch and the Justice Department corroborate what the Special Rapporteur herself heard from former inmates, former guards and prisoners who spoke to her on the phone. The Special Rapporteur was also shown a video made by the Corrections Department of a young woman who was placed in four-point restraints, a description of which appears in the first part of this report. The abuse taking place is truly shocking.

149. The Special Rapporteur is particularly concerned at the retaliation that the women who had come forward to challenge their abusers were subjected to. Retaliation was not only aimed at the inmates, but also at sympathetic corrections officers. One former corrections officer who spoke with the Special Rapporteur said that she had left the Department because she tried to assist an inmate who had been abused and she was stabbed by other corrections officers. She claimed that corrections officers were shielded by a powerful union with enormous political power which allowed them to act with impunity in the State of Michigan.

150. Women who have been involved in the suit have alleged that they have been subjected to a great deal of retaliation. One of the women who spoke to the Special Rapporteur said that she had been criminally prosecuted on a trumped-up charge of substance abuse, as a result of which she has been denied visitation rights for the rest of her life and kept in punitive segregation for 275 days. Despite the suit, she alleges that she was sexually assaulted again by one of the defendants. She tried to commit suicide and was placed naked in five-point restraints without a blanket for nine hours. She was subjected to 24-hour surveillance for 29 days. She was then transferred to a different facility but was assigned to a housing unit in which the residential unit officer was also a defendant in her case. The Special Rapporteur spoke to other inmates who corroborated the allegation of retaliation against women who had decided to speak out. The security of these women is of serious concern to the Special Rapporteur.

151. Since the Special Rapporteur was denied access to the prison facilities, she is unable to discuss in detail the measures taken to combat sexual misconduct or to provide health care or parenting programmes. However, she felt that the allegations of abuse, corroborated by diverse sources, were serious enough to be placed on record.

D. Minnesota

152. The Minnesota Department of Corrections continues to pride itself on having a humane corrections system with a philosophy that emphasizes rehabilitation rather than punishment. The philosophy stresses the development and provision of programmes that will control the inappropriate behaviour of offenders and assist them in functioning as law-abiding citizens. This philosophy has been tailored for female offenders by supporting their right to "parity of treatment" while recognizing their unique needs. Minnesota remains the only state to have a full-time Director of Planning for Female Offenders and a State Planner for Adolescent Female Offenders at the Department of Corrections whose functions include providing education, advocacy and work in the implementation of the 1986 state plan for women.

153. Minnesota ranks forty-ninth in the nation with regard to the number of persons incarcerated in state prisons per 100,000 of the population. Minnesota has had relatively low levels of violent crime for many years and ranks thirty-sixth nationally. The low incarceration rate is a reflection of the heavy reliance on local alternatives to prison for less serious offenders. The system is designed to reserve expensive prison space for dangerous criminals.

154. "Restorative justice" is a new framework for the criminal justice system that is rapidly gaining acceptance and support among criminal justice professionals and community groups in Minnesota and across the nation. The Minnesota Department of Corrections advocates the adoption of restorative justice principles and has established a departmental unit in support of its implementation. Restorative justice is a philosophical framework which has been proposed as an alternative to the present way of thinking about crime and criminal justice. It emphasizes the ways in which crime harms relationships within the context of the community. Crime is seen as violence against the victim and the community, rather than violence towards the State; consequently, the offender becomes accountable to the victim and to the community, rather than to the state. Restorative justice focuses on remedying the harm done to the victims and community and provides for active participation by the victim, the offender and the community in this process. The elements of restorative justice include: services for the victims, restitution, community service, face-to-face meetings between victims and offenders and their support systems and skill-building classes for offenders.

155. Another alternative justice experiment that was introduced to the Special Rapporteur in Minnesota was "home monitoring" with the use of satellite technology. Wearing a bracelet that allows the satellite to monitor their movements, the inmates are allowed to stay at home and attend the programmes assigned to them by the Corrections Department. This possibility must be explored further since many women in prison are incarcerated for non-violent crimes and, especially, substance abuse.

156. The Special Rapporteur visited Shakopee prison at the invitation of the Minnesota Department of Corrections. The Department was frank with the Special Rapporteur and reported that there were cases of sexual misconduct in Minnesota prisons but that there was a grievance procedure and an ombudsman, which allowed for the quick resolution of such problems. At Shakopee, the

warden told the Special Rapporteur that four incidents between male corrections officers and female offenders had occurred 18 months previously. Three of the four incidents were not substantiated (two women offenders had complained of having been watched by two male staff in their room) but the fourth concerned a male corrections officer who allegedly forced a woman to submit to kissing and fondling.

157. The State of Minnesota has no specific legislation criminalizing sexual abuse of prisoners. Corrections employees could be prosecuted under the state's existing sexual assault and rape statutes. Under those laws, consent by the inmate could be invoked as a defence against criminal liability. Many experts believe, however, believe that the inherent disparity in power between prisoners and corrections employees renders valid consent unlikely in the prison context. Also, from both a management and a public policy perspective, sanctioning consensual sex between corrections employees and prisoners severely impairs legitimate goals such as prison security, inmate management and rehabilitation. 31/ Minnesota is in urgent need of legislation that criminalizes sexual misconduct between corrections officers and prisoners.

158. The Health Services Unit at Shakopee was expanded to address the need for intensive health-care planning, management and cost-containment efforts. The Unit provides a full range of medical, dental, psychological and psychiatric services. No inmates complained about the health care at Shakopee.

159. Shakopee provides a parenting/family programme for female offenders in order to help them in restructuring and preserving the family unit during their incarceration. Children of mothers residing in the facility's parenting unit can stay with their mothers over the weekend (Friday night till late Saturday afternoon). Children of other inmates, living in other units, are also allowed visits on weekends, but cannot stay overnight at the facility. An independent living centre is also provided with six two-bedroom units, each with a kitchen, living area and bathroom. Only female offenders who have demonstrated the highest level of trust and dependability during their incarceration are allowed to reside in the independent living centre.

160. In 1972, Minnesota became the first State in the United States to establish a corrections ombudsman's office. This office, headed by a woman since 1992, continues to provide a forum for the concerns, grievances, complaints and allegations of inmates. In a confidential procedure, female offenders can send a memo directly to the ombudsman, who operates quite independently of the Department of Corrections. Female offenders have free access to the ombudsman's office, which even conducts its investigations via the telephone. Investigations include unescorted visits to the correctional institution. The Department of Corrections has also established a special investigation office, which is staffed by specially trained officers who are responsible for investigating reports of inappropriate activity in the detention facilities, including charges of sexual misconduct by corrections officers.

161. Shakopee is a model prison. It is a minimum-security institution designed to blend into the neighbouring residential area. There is no

fence around the facility. Outside doors, cell doors and other access areas are monitored electronically from central control panels.

162. The number of inmates incarcerated there increased significantly during the 1996-1997 biennium, when it reached an all-time high. During that period, the number of women inmates increased by 43, a 20 per cent increase. In July 1995 there were 216 women inmates and two years later, the total had reached 259 - the highest total on record. The Shakopee facility is operating above its capacity of 237 by converting day-room areas into dormitories. Plans have been made to expand the facility through the construction of a housing unit with a capacity of 124 inmates in double bunks in order to accommodate future growth. The Shakopee Overcrowding Committee, chaired by the warden, Ms. Roehrich, believed that a reasonable alternative to incarceration would be gender-specific probation to reduce the number of women sentenced to prison for less than two years.

163. The profile of the female offenders the Special Rapporteur met at Shakopee was as follows. Most female offenders had children and usually were solely responsible for them. Most women had been sexually abused as children and involved in abusive adult relationships. They were often chemically dependent and lacked education and work skills. Their crimes ranged from theft to murder, though many crimes involved dependency on a male. The female offenders were all over 18 and their average age was 32. The average length of stay, excluding those with life sentences, was 38½ months.

164. The corrections officers' staff comprises of 100 people, 60 per cent of whom were women. The Special Rapporteur noted with appreciation that the corrections officers holding contact positions over female offenders were female. Shakopee has a strict policy regarding supervision of women offenders by male corrections officers, and at this facility the majority of officers are women and there are three women officers present on each watch, thus allowing all women inmates to be pat-searched by female staff only. According to the warden, no female offenders had ever been stripped-searched by male staff. Shakopee has focused on training, which concentrates on making staff more sensitive to the suffering frequently experienced prior to incarceration, such as sexual or physical abuse.

165. At Shakopee, various programmes are conducted for female offenders. Two of these are mandatory for everyone during their first four weeks of incarceration: Victim Impact and Cognitive Thinking. The latter provides a forum for discussion about the thoughts and feelings behind the crimes that have been committed. Victim Impact classes for female offenders have been developed to teach inmates to understand the impact of their criminal behaviour, to learn how to bond with positive people and to contribute to their communities in a way that will prevent future victimization. The subjects covered are property crimes, drugs and society, drunk driving, violent crimes, child victimization, elder victimization and gang violence.

166. Female offenders have access, through the facility's education unit, to a variety of academic, artistic and vocational educational opportunities, including horticulture, data processing, desktop publishing and construction trades. An interactive television connection between the facility and Hennepin Technical College provides expanded educational programming.

167. In Minnesota, the re-entry of women into society is an important concern. Re-entry Metro is a female offender halfway house located in St. Paul. It is a private, non-profit organization, which has been in operation for over 10 years and provides residential services to women offenders and their children. The profile of the women in Re-entry Metro is as follows: 20-35 years of age, unmarried (80 per cent) and with a history of past sexual and/or physical abuse; 65 per cent are mothers; 60 per cent have been previously incarcerated; 50 per cent are women of colour; 50 per cent do not have high school diplomas.

168. This programme for women aims at offering a cooperative, structured living environment where women are encouraged to examine personal values and morals, developing independent living skills and striving for financial independence in order to avoid becoming reinvolved in criminal activities. Re-entry Metro provides women offenders, inter alia, with a plan and goals, individual counselling, monitoring of employment, drug and alcohol screening and chemical dependency counselling, general job counselling and referral to more specialized agencies regarding employment. Between 40 and 50 per cent of the women residing at Re-entry Metro are on work release from Shakopee. Other women are on state-supervised release, on probation through district and municipal courts in metropolitan and suburban counties, or on work release from local jails. The programme also provides services through county child protection agencies to women who are not serving a prison sentence. Residential services, including comprehensive programming, are provided for a maximum of 26 women and 5 children. These women are attempting to repair and rebuild their lives and the lives of their children, which have been fragmented by crime, incarceration, drug abuse and other dependencies.

169. The Women's Addiction Service is a programme designed as a therapeutic community approach to the needs of the female offenders faced with the difficulties of an addictive lifestyle. Services include: individual needs assessment; residential multiphase treatment sessions; health and addiction education; and community recovery groups.

E. New York and Connecticut

170. During her mission to the eastern part of the United States, the Special Rapporteur visited selected federal (Danbury Federal Correctional Institute in Connecticut) and State prisons (Bayview Correctional Facility in New York City and Bedford Hills Correctional Facility in New York State). Danbury Federal Correctional Institution in Connecticut is a low-security facility currently housing approximately 1,000 female inmates. Bedford Hills is New York's only maximum-security correctional facility for women, with a capacity of 800 women of whom 40 per cent have been convicted of drug-related offences. The institution looks like a small college campus, a remnant of the historical legacy of the reformatory movement. Among the women incarcerated, 756 are mothers. Their average age is 34.

171. According to one study, New York has one of the largest female prison populations in the country (exceeded only by Texas and California). 32/ As of 31 December 1997, 3,562 women were detained in New York State prisons, which is 5.15 per cent of New York's total prison population. Sixty per cent of women prisoners had been incarcerated for drug-related offenses, 33/ over

woman complained of not having been given a blood test when she was pregnant. The psychologist is much appreciated by the female inmates, but the living conditions and equipment of the Trauma Unit at Danbury are grossly under-funded.

177. HIV seropositive rates are higher among women than among men in almost all correctional institutions in the United States. In 1996, 16 per cent of women entering New York State prisons tested HIV-positive. Between 1992 and 1996, only 21 women were released from New York prisons as part of the medical parole programme, which permits parole of seriously ill inmates before they have served their minimum sentence. In Bedford Hills, 20 per cent of the women are under treatment for HIV.

178. The Special Rapporteur received complaints from many female inmates that corrections officers threatened both their lives and those of their families by using personal information obtained from prison files, to exert mental harassment and pressure on the inmates. Such allegations support the need for independent grievance procedures.

179. The prison administration in Bayview, Bedford Hills and Danbury informed the Special Rapporteur of the programmes they had for the prisoners and their procedures for dealing with inmate grievances. A leaflet, entitled "What you need to know on sexual assaults", addressed to the female inmates at Danbury explains clearly what sexual assault is, the conditions under which it occurs, and the complaints and follow-up procedures to follow in case of sexual assault. The memorandum does not address the case of sexual misconduct between female inmates and corrections officers. Nevertheless, this information is useful for a vulnerable person coming to prison with fears.

180. As noted, a high percentage of women entering State or federal prisons are mothers. In this context, the Special Rapporteur wishes to highlight the programme on parenting at Bedford Hills as a model for other prisons. This programme consists of various activities aimed at preventing family disintegration, enhancing the parenting skills of detained mothers and preparing them, together with their children and families, for reunification, including workshops such as the following:

A 16-week parenting workshop, in English and Spanish, which focuses on the relationship between incarcerated women and their children;

A parenting follow-up class, which anticipates the mother's release from prison and the problems that occur on their return to their children and families;

A parental legal rights workshop, which provides women with legal experts to advise them on their parental rights to both formal and informal care, as well as their obligations to maintain contact with foster-care agencies;

A story corner for mothers of children under 12 to read and tape-record stories from children's books in their own voices. The tapes, averaging 30 minutes, are then sent to the child along with the book. This

promotes family literacy, while allowing meaningful contact between the child and mother beyond the prison walls. Approximately 75 women tape stories for their children weekly.

181. According to the warden at Bedford Hills, an average of 6 per cent of women are pregnant when they enter the facility. In response, the death row unit has been converted into a nursery where young, short-term offenders, not convicted of a violent crime, can keep their children with them for up to 18 months. An average of 80 per cent of the women leave the facility with their babies.

182. Dynamic initiatives at Bedford Hills have mainly come from the inmates themselves. For example, a series of nine workshops taught four times a year, providing women with negotiating tools for their dealings with the foster care and family court systems, was designed by women inmates. One project implemented by the very active Children's Center is called "sponsor a baby", which gives assistance to babies born to incarcerated mothers by providing material needs for the baby. Since 1980, the Center has sponsored a 10-week summer programme for the children of inmates which works well due to the cooperation of the prison staff, outside staff and volunteers who are host families. Each day, the child is brought to visit his or her mother and spends 6½ hours with her. Mother and children have special lunches together and take part in regular day camp activities.

183. In order to overcome the problem of visiting with children in light of the distances between the prison and urban centres, Bedford Hills parenting center provides monthly buses from different parts of the State (New York City, Rochester, Albany, Syracuse, etc.). This constitutes the biggest expense in the institution's budget. In addition, female inmates can receive their families for two to three days in a small trailer apartment provided by the prison.

184. Bayview Correctional Facility is unique in that it is situated in New York City itself. Under the programme "family dynamics", children are transported to the prison from their place of residence for supervised visits with their mothers, preparing mother and children for reunification.

185. Of the 3,562 women detainees in New York State prisons, 85 per cent report having been physically and/or sexually abused as children or as adults. "The Bridge Programme", initiated at Danbury, offers weekly activities as well as an intensive unit-based programme to address issues relating to past abuse. According to the women themselves, it has produced positive benefits for women, many of whom are able to rebuild their self-esteem and deal with the prospect of long-term incarceration.

186. Approximately 51 per cent of the women incarcerated in New York had less than a twelfth-grade education at the time of their entering prison and 32 per cent could not read above the sixth-grade level. 35/ In view of this situation, the "College Bound" programmes implemented at Bedford Hills are to be complimented. In 1995, public funds for college education in all New York state prisons were eliminated and a successful 15-year-old college programme at Bedford Hills Correctional Facility came to an abrupt halt. However, with

the combined efforts of the prison community, the academic community and the community-at-large, privately funded college degree and college preparatory programmes were re-established at Bedford Hills.

187. The Women's Addiction Service is a programme designed as a therapeutic community apprcach to the needs of the female offenders faced with the difficulties of an addictive lifestyle. Services include: individual needs assessment; residential multiphase treatment sessions; health and addiction education; and community recovery groups.

F. Immigration and Naturalization Service

188. The Special Rapporteur was interested in exploring the conditions of women kept in detention centres by the Immigration and Naturalization Services (INS). 36/ She visited the Varick Street INS Facility in New York City (only three women were detained at the time of the visit) and the Elizabeth INS Facility in New Jersey, which is owned and operated by Correction Corporation of America. She also had the opportunity to meet Ms. Doris Meissner, INS Commissioner, and her staff. The Special Rapporteur is grateful for their efforts in giving her full access to the INS facilities in New York and New Jersey. During her visit, meetings with UNHCR staff in Washington D.C. and Amnesty International United States staff in San Francisco were very fruitful. Also, the comprehensive report issued by the Women's Commission for Refugee Women and Children (the Women's Commission) helped the Special Rapporteur to identify problem areas. 37/

189. There are different kind of detention areas used by the INS: their own facilities, contract facilities and local prisons with federal beds. About 50 per cent of the detention space used by the INS is in county jails, where asylum seekers are mixed with the prisoners. The Special Rapporteur was informed that this practice is a less expensive solution than building a new facility. However, it should be mentioned that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 has placed an increased emphasis on detention and therefore requires the INS, subject to appropriate funds, to, inter alia, increase the detention capacity.

190. The imprisonment of asylum seekers in United States detention centres and prisons is becoming increasingly common. Even pregnant women are now being held in detention cells contrary to international practice. Currently, the INS detains approximately 15,000 individuals on any given day, more than half of whom are held in local prisons. 38/ An estimated 10 per cent of these detainees are women. Asylum seekers who come to the United States are usually fleeing human rights abuses in their home countries, including torture, rape, religious persecution, disappearance, arbitrary imprisonment and other forms of oppression. Women frequently endure persecution particular to their gender, including politically motivated rape, female genital mutilation, forced prostitution and forced marriages. In consequence, the conditions in which women are detained in many cases may further traumatize them and constitute additional harassment.

191. According to reports received by the Special Rapporteur, women asylum seekers are more likely to be placed in jails than men ("because of their fewer numbers"). The Special Rapporteur is concerned about the deficiency of

measures undertaken to harmonize detention policy nation-wide. The lack of uniform standards in INS detention centres, contract facilities and local jails for detained asylum seekers has harmful consequences on the condition of women asylum seekers in detention. The Special Rapporteur also remarked that, despite the willingness to improve the situation of detainees in INS contract facilities (such as the separation of women from men, medical care and a general requirement that female guards should be assigned to female prisoners), there are no specific guidelines on gender and the conditions in which women are detained fail to provide for their physical and social well-being. The lack of an overall gender policy and training in gender-sensitive guarding is of concern to the Special Rapporteur.

192. The situation of women can only be identified and improved where disaggregated statistical data and other information are available. Such information is particularly lacking for vulnerable groups, such as women victims of violence (domestic violence or violence perpetrated by their State of origin, for instance). One consequence of this absence of qualitative and quantitative information is the reduced effectiveness of programme implementation.

193. It is disturbing to note that women asylum-seeking detainees are detained with criminals and, consequently, receive the same treatment in local prisons as the general criminal population and those awaiting deportation on criminal grounds. The INS and prison administrators justify this practice with the rationale that the limited number of female asylum seekers makes it impractical to provide separate living quarters from those housing female criminal inmates. Above all, the mingling with violent people can represent a risk for the women of rape and physical threats. In 1993, UNHCR, reporting on its tours of detention sites in Florida and Louisiana, noted that "in both INS facilities and local jails utilized for INS detention, refugees and asylum seekers were sometimes detained with criminal offenders" and "more than one woman asylum seeker ... complained of repeated sexual harassment by a criminal offender accommodated in the same facility". 39/

194. Furthermore, the Special Rapporteur was informed that shackling non-criminal asylum-seekers at ports of entry, such as Kennedy airport, is a common INS procedure. They are also shackled during legal hearings. It should be noted that at the Elisabeth Facility in New Jersey, non-criminal immigrant detainees wear 10-pound bracelets on each leg when meeting with their lawyers inside the building and are subjected to frequent strip-searches inside the building and during transfers. Apart from the humiliation, the practices of shackling non-criminal detainees, and conducting frequent strip-searches are, in effect, treating women asylum-seekers as if they were criminals. Furthermore, complaints concerning the treatment of detainees by INS and jail staff are frequent. Physical and verbal abuse by prison guards has been reported, as well as punitive use of segregation.

195. The Special Rapporteur is concerned about the lack of activities for women asylum-seekers. Detainees reported spending their days lying in bed or watching television. Access to outdoors is strictly limited. It is alleged that no specific activities or educational facilities are provided by the management of the INS facilities because of the short period of detention,

which averages 30 days. According to a study, however, 27 facilities in New York and 12 in New Jersey used by the INS detain persons for periods exceeding 30 days. 40/

196. Access to medical care is also a concern for the Special Rapporteur, particularly cases of failure to provide medical care where parole has not been granted to women with medical problems. It is the view of the Special Rapporteur that the physical and psycho-social needs of women are not properly addressed. Long-term detention is psychologically devastating, particularly for women who have been persecuted by their Governments. Many women experience stress and trauma due to prolonged detention, with harmful consequences on their physical and mental health. In this connection, the Special Rapporteur is also deeply concerned about the detention of pregnant women in INS facilities such as the Elisabeth detention centre, where essential medical needs are not properly addressed.

197. There is also a general lack of access to legal resources and information for the asylum-seekers. In addition, frequent transfers to different facilities militate against the asylum-seeker keeping in contact with her lawyer. In 1996, the Women's Commission for Refugee Women and Children reported that many of the Chinese women from the freighter Golden Venture (which ran aground off New York in June 1993) had lost contact with their attorneys. The National Coordinator of Amnesty International USA pointed out that, unlike criminals, immigrants whose asylum claim has been denied have no constitutional rights and, in consequence, are not guaranteed a lawyer.

198. The Special Rapporteur considers that insufficient measures have been adopted to facilitate access to interpreters and to provide assistance to clarify information given to asylum-seekers, particularly for women belonging to an indigenous population. Detainees interviewed by the Special Rapporteur at Elisabeth complained that they had no opportunity to communicate with the personnel and other residents of the centre because of the lack of a common language. Language is a constant problem faced by detainees and also by the staff. Sometimes arbitrary and disproportionate disciplinary actions may arise partly from the failure to explain the facility's rules to the women in their own language. It was reported that at one INS centre, for example, a woman was deported to China after having complained of being beaten by guards for sleeping in the wrong bed after guards had given her confusing orders.

199. The Special Rapporteur is concerned about the problem of family unity, which is not respected in detention. Detained family members (including children) are separated and there are no guidelines. In some detention centres, including Elizabeth, direct contact with the family during visits is prohibited.

200. It has been reported to the Special Rapporteur that, despite the willingness of the INS Central Office to collaborate with NGOs, some INS district offices and other staff deny access to the detention facilities which would allow the NGOs to investigate the condition of women in detention.

201. It was brought to the Special Rapporteur's attention that the use of "expedited removal", introduced in 1997, impedes individuals from exercising

their right to seek asylum and may violate international prohibitions against refoulment. Mrs. Ogata, the United Nations High Commissioner for Refugees, expressed at the time the fear that those arriving without proper documents would have trouble articulating their claim under the conditions of detention and the short time-frame that had been put in place. The new "fast-track" procedure would be particularly difficult for survivors of torture and other extreme trauma". 41/ It is the view of the Special Rapporteur that recent legislation fails to safeguard against unnecessary and prolonged detention of asylum-seekers. In this connection the Special Rapporteur recalls the conclusion of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees affirming that "in view of the hardship which it involves, detention should normally be avoided". 42/

202. Elisabeth detention centre had a capacity of 250 men and 50 women at the time of the Special Rapporteur's visit. It is a recently revamped contract facility, replacing the former INS facility which was closed down because of complaints. It is alleged to be a short-term facility and houses no convicted criminals, only asylum-seekers and detained immigrants. Despite this, the emphasis of the construction is on security and surveillance. Some of the prisons visited were more "humane" in construction than this INS facility. In the female part of the facility, the direct supervision of women is assigned to female detention officers who conduct, inter alia, pat-frisks and strip-searches. A complaints procedure exists and permits each woman to complete a "resident grievance form" on any subject, including harassment.

203. The administration provides women residents with translators and interpreters (including access to telephonic interpreters), voluntary work programmes (in the library, kitchen and laundry, remunerated by a "salary" of US$ 1.00 per day), educational programmes and English classes. Women have access to a commissary once a week where, inter alia, phone cards can be purchased. In addition, free phone calls to 75 consulates and pro bono lawyers are available. Great emphasis is laid on the food services. All meals are reviewed by a nutritionist and a dietician and take account of religious and ethnic requirements. The women interviewed agreed about the good quality of the health care services provided for them. In this connection, a health education manual is available in different languages. The Special Rapporteur welcomes the improvements to the facility, which she understands are due partly to the actions of the new warden.

204. The INS has announced the expansion of its Asylum Pre-Screening Programme (APSO). Under the programme, asylum applicants can be recommended to the district director for parole if they are judged to have "credible" and "substantial" claims and are not likely to constitute a threat to public safety. 43/ According to a draft procedure manual, APSO interviews should be conducted by asylum officers. In addition, the INS has initiated a demonstration project with the Vera Institute in which asylum-seekers with a credible fear of persecution would be subject to supervised release. Certain relevant sources, however, have pointed out that APSO is only a programme and does not carry the force of law. Its implementation is subject to the discretionary power of the district directors, who ultimately make the decision whether to release an individual.

VI. RECOMMENDATIONS

A. Federal Level

205. The United States should ratify the Convention on the Elimination of All Forms of Discrimination against Women and remove its reservations to important international treaties like the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It should enact implementing legislation so that these international treaties have a legal basis with regard to the national legal system.

206. The President's Inter-Agency Council on Women, the working group of women in prisons as well as the Violence against Women Office of the Department of Justice should be given resources to study key policy areas such as:

(a) Drug laws and their severe impact on women;

(b) A national mental health policy and the imprisonment of women with mental health problems;

(c) Race policy in light of the intersection of race, poverty and gender and the increase in the incarceration of African American women, the causes of this increase and the consequences for the African American family; and

(d) Domestic violence and women in prisons.

207. Federal funding for state correctional facilities should require the following minimum conditions:

(a) The states should criminalize all forms of sexual violence and sexual misconduct between staff and inmates, whether it occurs with the consent of the inmate or without;

(b) There should be a prescreening of the backgrounds of those who apply to be corrections officers and any history of violence against women should disqualify individuals from being hired;

(c) All corrections officers should be trained with regard to sexual misconduct issues as part of the mainstream training programme;

(d) There should be external monitoring of prison management either by review boards, ombudsmen and/or special investigative units in corrections departments;

(e) In consultation with the psychiatric, medical and human rights community, certain methods of restraint should be prohibited;

(f) Minimum standards with regard to health care should be spelt out, including the presence of a qualified doctor on 24-hour call and easy access to gynaecologists;

(g) All facilities, whether public or private, should have a minimum number of programmes, especially on parenting and vocational training;

(h) Certain posts, such as corrections officers in housing units, and procedures, such as pat-frisks and body-searches should be based on same-sex guarding.

208. The Civil Rights Division of the Department of Justice should be strengthened and given adequate resources to pursue cases with regard to the Civil Rights of Institutionalized Persons Act. Data-gathering should be systematic and the establishment of a hotline would be welcome.

209. The National Institute of Corrections should develop national guidelines based on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Training on sexual misconduct should be a high priority of the Institute's programmes with the states. Finally, the Institute should attempt to formulate a model grievance procedure that is more effective in dealing with prisoners' grievances.

210. With regard to the Immigration and Naturalization Services, the Special Rapporteur has the following recommendations:

(a) The INS should have a gender policy that systematically deals with gender issues, including detention of pregnant women, provision of services and cross-gender guarding in the facilities;

(b) There should be a uniform policy enforced in all districts. The lack of uniformity appears to promote the view that the INS is arbitrary in dealing with detainees;

(c) Detainees should not be mixed with the criminal population either at detention centres or in jails. Instead of sending detainees to jail, more resources should be allocated for detention facilities run by the INS;

(d) At no time should detainees be kept with leg irons and other types of restraints;

(e) Even though the United States Supreme Court has held that detainees have no constitutional rights, they retain international human rights and therefore their due process rights should be protected. They should have full access to lawyers and translators. Families should have visitation rights;

(f) All staff working at INS facilities and INS-sponsored facilities should have training with respect to sexual misconduct and how to address complaints of sexual misconduct;

(g) As far as possible, family units should not be separated. Minor children especially should not be separated from their parents;

(h) As far as possible, those seeking asylum should not be detained, but dealt with through other mechanisms.

B. State level

211. All states should enact laws that criminalize sexual misconduct between staff and prisoners and those who violate these laws should be criminally prosecuted. All administrative codes should include detailed guidelines with regard to sexual misconduct.

212. Grievance procedures within state correctional institutions should ensure due process. External monitoring of prison conditions is a necessity. Ombudsmen, hotlines, external review boards, etc., should be established.

213. State correctional institutions should adopt the Georgia model with a special investigative unit within the Department of Corrections dedicated to the issue of sexual misconduct, its investigation and prosecution.

214. All states should include prohibition of sexual abuse and sexual misconduct as part of their mainstream training and core curriculum.

215. All staff, including corrections officers, should be subject to prescreening and no person with a history of abuse should be hired.

216. Inmates who bring grievances should be protected against retaliation. They should only be sent to administrative segregation at their request and those accused of misconduct should be suspended or placed in a position that does not allow them to come into contact with the inmates. The Special Rapporteur is particularly concerned at the situation in Michigan State prisons.

217. Inmates should have a limited right to privacy. Certain posts within women's prisons should be gender-specific. There should be same-sex guarding in the housing units and pat-frisks and body-searches should only be conducted by same-sex corrections officers.

218. There should be minimum standards with regard to health care. A qualified doctor should be on the premises for 24 hours. There should be timely referrals and easy access to gynaecologists. Women's reproductive health concerns should not be neglected. Given the fact that many of the women in prisons are mentally ill, special concern should be given to their cases and they should not be ignored or overmedicated. Special programmes should be available for women who have been physically and sexually abused. The Bridge Programme in Danbury is a model programme that should be followed in other jurisdictions.

219. More resources should be given to parenting programmes in women's prisons. Transportation of children to visit their mothers should be encouraged and qualified professionals and counsellors should help the women deal with their parenting problems. Special care should be taken when children visit their mothers and there should be occasions when some of the women can spend time with their children in a special unit. In this regard, Bedford Hills has a model programme for parenting that could be developed elsewhere.

220. The states should assist NGOs to set up halfway houses for women about to be released so that they can better integrate into the community once they are released. Minnesota's programme in this regard is worthy of emulation. Former detainees should be allowed to counsel women prisoners about returning to the community.

221. Alternative justice programmes should be explored for women. Given their parenting problems, home monitoring as used in certain cases in Minnesota may help resolve some of the more difficult concerns, especially in the case of non-violent offenders of victimless crimes.

Notes

1/ Human Rights Watch, All Too Familiar - Sexual Abuse of Women in United States State prisons, Human Rights Watch, New York, 1996, p. 16.

2/ Federal Bureau of Prisons, briefing paper prepared for the Special Rapporteur, 1998.

3/ Steven R. Donziger (ed.), The Real War on Crime, Harper Collins, New York, 1996, p. 147.

4/ Ibid., p. 146.

5/ Ibid., p. 146.

6/ Human Rights Watch, op. cit., p. 15.

7/ Federal Bureau of prisons, op. cit.

8/ Ibid.

9/ Human Rights Watch, op. cit., p. 18.

10/ Donziger, op. cit., p. 149.

11/ Ibid., p. 150.

12/ Information provided by New York State Governor's office.

13/ Tracy Huling "Women Drug Couriers" in Criminal Justice, vol. 9, No. 4, 1995, p. 14.

14/ Correctional Association of New York, Injustice will be Done - Women Drug Couriers and The Rockefeller Drug Laws, New York, February 1992.

15/ See the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the United States of America (E/CN.4/1998/68/Add.3).

16/ Marc Mauer and Tracy Huling, "Young Black Americans and the Criminal Justice System Five Years Later", unpublished briefing paper, on file with the Special Rapporteur.

17/ Ibid., p. 1.

18/ Ibid., p. 2.

19/ Ibid., p. 6.

20/ Ibid., p. 10.

21/ Farmer v. Brennand, 114 S. Ct. 1970 (1994).

22/ Jordon v. Gardner, 986 F.2nd 1521 (9th circ. 1993).

23/ Human Rights Watch, op. cit., p. 29.

24/ Amnesty International, United States of America - Rights for All, AI Index AMR/51/35/98, 1998, p. 65.

25/ Ibid, p. 67.

26/ Official Records of the General Assembly, Fiftieth Session, Supplement No. 40 (A/50/40), vol. I, paras. 285, 299.

27/ "CDC Facts", publication of the California Department of Corrections, Communications Office, 1 May 1998.

28/ Human Rights Watch, op. cit., p. 21.

29/ Michigan Comparative Law Annotated sect. 750-520 (e) (d).

30/ Human Rights Watch, United States - Nowhere to hide: Retaliation Against Women in Michigan State Prisons (G1002), September 1998.

31/ Fifty-State Survey of Criminal Laws prohibiting Sexual Abuse of Prisoners, National Women's Law Center. April 1998, p. 38

32/ "Women in Prison", fact sheet published by the Correctional Association of New York, Women in Prison Project. New York State Department of Correctional Services, Bureau of Justice Statistics and United States Department of Justice, the Coalition for Women Prisoners, Women's Economic Agenda Project (1994-1997).

33/ The law requires that a person convicted of a sale of two ounces of cocaine in New York State receives the same mandatory minimum sentence as a murderer: 15 years to life. Report and recommendations of the Drug Policy Task Force, New York Lawyers Association, October 1996.

34/ The New York Penal Code, sect. 130.05 (1996) on sex offences states that "a person is deemed incapable of consent when he or she is (...) committed to the care and custody of the State department of correctional

services or a hospital; or committed to the care and custody of a local correctional facility". This law covers employees of the State department of correctional services who performs professional duties in a State correctional facility consisting of providing custody, medical or mental health services, counselling services, educational programmes or vocational training for inmates. It also covers employees of the Division of Parole and the Office of Mental Health who perform professional duties and provide professional services in a State correctional facility. In National Women's Law Center, op. cit., p 28.

35/ "Women in Custody", op. cit.

36/ The United States Immigration and Naturalization Service (INS), an agency of the Department of Justice, is responsible for enforcing the laws regulating the admission of foreign-born persons (i.e., aliens) to the United States and for administering various immigration benefits, including the naturalization of resident aliens. The INS also works with the Department of State, the United Nations, and the Department of Health and Human Services in the admission and resettlement of refugees. The INS is headed by a Commissioner who reports to the Attorney General.

37/ "Liberty denied: Women seeking Asylum imprisoned in the United States", Women's Commission for Refugee Women and Children, April 1997.

38/ "Forgotten prisoners: a follow-up report on refugee women incarcerated in York County, Pennsylvania" Women's Commission for Refugee Women and Children, July 1998, p. 14.

39/ Letter by UNHCR representative to Doris Meissner, INS Commissioner dated 4 March 1993.

40/ "Liberty denied", op. cit. p. 9.

41/ Statement addressed by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees at the United States Holocaust Memorial Museum (Washington, DC, 30 April 1997).

42/ UNHCR, Executive Committee of the High Commissioner's Programme, Conclusion No. 44 (XXXVII), para. (b), 1996.

43/ In Gene McNary, INS Commissioner, Memorandum: Parole project for asylum-seekers at ports of entry and in INS detention, 20 April 1992.

Annex

LIST OF SELECTED PERSONS/ORGANIZATIONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HER MISSION

United States

Senators

Senator Edward Kennedy (Massachusetts)

Senator Paul Wellstone (Minnesota)

Department of State

Ms. Theresa Loar	Senior Coordinator for International Women's Issues

Department of Justice

Ms. Bonnie J. Campbell	Director, Violence against Women Office and Chair of the Working Group on Women in Prisons (President's Interagency Council on Women)
Ms. Shannetta Brown Cutlar	Trial Attorney, Special Litigation Section, Civil Rights Division
Ms. Tawana Davis	Trial Attorney, Special Litigation Section, Civil Rights Division
Ms. Karen Fitzgerald	Program Officer, Immigration and Naturalization Service
Ms. Joan Higgins	Assistant Commissioner for Detention and Deportation, Immigration and Naturalization Service
The Honourable Eric H. Holder Jr.	Deputy Attorney-General
Mr. Robert Jacobson	Immigration and Naturalization Service
Ms. Teresa Hunt Katsel	Administrator, Special Needs Offenders, Corrections Program Division, Bureau of Prisons
Ms. Kathleen M. Kenne	Assistant General Counsel, Legislative and Corrections Issues Board, Office of General Counsel and Review, Bureau of Prisons
Ms. Eileen C. Mayer	Associate Deputy Attorney-General, Bureau of Prisons

Mr. Larry Meachum	Director, Corrections Program Office
Ms. Doris Meissner	Commissioner, Immigration and Naturalization Service
Mr. Philip Merkle	Assistant to the Director, Corrections Program Office
Mr. John T. Morton	Counsel to the Deputy Attorney-General
Ms. Andie Moss	Correctional Program Specialist, National Institute of Corrections
Ms. Mellie Nelson	Deputy Chief, Special Litigation Section, Civil Rights Division
Ms. Wendy Patten	Counsel, Office of Policy Development
Ms. Carolyn A. Sabol	Deputy General Counsel, Office of the General Counsel and Review, Bureau of Prisons
Mr. John Simon	Special Assistant, Office of Field Operations, Immigration and Naturalization Services
Mr. Monty Wilkinson	Associate Deputy Attorney-General

UNHCR

Ms. Bernadette Passade Cissé	Legal Counsellor
Mr. Paz Cohen	Senior Public Information Officer
Mr. R. Andrew Painter	Legal Counsellor

Non-governmental organizations

Aid to Children of Imprisoned Mothers,
American Friends Service Committee (Quakers)

Amnesty International

Catholic Legal Immigration Network (CLINIC)

California Prison Focus

Carter Presidential Centre of Emory University

DC Prison Legal Services

Family for the Future

General Board of Global Ministries

Human Rights Watch

International Human Rights Law Group

Legal Service for Prisoners with Children

Minnesota Advocates for Human Rights

Miracle Star

National Refugee Coordinator at Amnesty International USA

National Women's Law Centre

Prison Legal Assistance

Revelation Seed Workshop

Women's Advocate Ministry

Women's Centre

Women's Commission for Refugee Women and Children

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